PROCEEDINGS at the ASSIZES at THETFORD,

On the 18th of *March*, 1786, and the 24th of *March*, 1787,

IN THE

TRIAL of WILLIAM HURRY, Merchant,

Of the Borough of GREAT YARMOUTH,

On an Indictment preferred againſt him by JOHN WATSON, Attorney at Law, then Mayor Elect of the ſaid Borough,

For WILFUL and CORRUPT PERJURY:

AND IN THE

ACTION againſt the ſaid JOHN WATSON,

Then Mayor of the ſaid Borough,

BROUGHT BY

The ſaid WILLIAM HURRY, for a *malicious Proſecution* of him by the above Indictment:

WITH

The *Subſtance* of Mr. PARTRIDGE's Opening in the *firſt* Trial:

AND

The Speeches *at large* of Meſſ. ERSKINE and HARDINGE in the *laſt*.

TO WHICH ARE ADDED

A Relation of the Nonſuit in the *latter* Cauſe at the Norfolk Aſſizes in Auguſt laſt; and a Report of the Argument thereupon in the Court of Common Pleas the Michaelmas Term following; and the Judgement of that Court, as delivered by the Lord Chief Juſtice, when the Nonſuit was ſet aſide, and a new Trial granted.

"In primis arduum videtur res geſtas ſcribere: primum, quod facta dictis exæquanda ſunt: dehinc, quia plerique, quæ delicta "reprehenderis, malevolentia & invidia dicta putant: ubi de magna virtute atque gloria bonorum memores, quæ ſibi "quiſque facilia factu putat, æquo animo accipit: ſupra ea, veluti ficta pro falſis ducit." SALLUST.

NORWICH:

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1787

To the PUBLIC.

UNWILLING to break my engagement with the Public, I permitted the Sale of the following Sheets to commence agreeably to my Advertiſement, although I had heard that this Day a Motion would be made by Counſel for Mr. Watſon for a new Trial.—— In conſequence, however, of this having actually taken place, I think it right to ſubſcribe my Name to the Work, and to make myſelf reſponſible for the Truth of the Facts that are ſtated in Evidence, for the Juſtneſs of the Repreſentation of the Speeches of Counſel, and for the Accuracy of the learned Judge's Addreſs to the Jury.

ROBERT ALDERSON,
Student of Lincoln's Inn.

Saturday, April 28, 1787.

THE Editor of this work dedicates it to the Gentlemen who compoſed the three reſpective Special Juries, who attended to decide upon the merits of the various matters which it recalls to their recollection.

Fully conſcious to himſelf that he has done his endeavour to be a faithful Hiſtorian, he flatters himſelf, with the fulleſt confidence, that he ſhall be entitled to their *verdict* for a fair, candid, and, as far as the nature of the caſe will admit of it, accurate ſtatement of facts.

If it ſhould be perceivable that he has ſome ſmall degree of bias to the ſide of the Plaintiff in the laſt action, he begs leave to obſerve that he does not wiſh to be conſidered as a hackney retailer of trials, who recounts the artful ſophiſtry by which villainy is protected, and by which it is rendered ſucceſsful, and the bold, ingenuous, animated, heart-touching eloquence by which virtue is made conſpicuous, and by which virtue is made triumphant, with the ſame unſympathizing indifference.—What was ſaid of a Roman Annaliſt, that he related the virtues of Germanicus and the vices of Tiberius, alike unaffected with his ſubject, the Editor would think a groſs ſatire, if ever, in any caſe at all analogous, it could be ſaid of him.—His credit, as a regarder of truth, is now with the public; and he truſts it will not be at all injured, becauſe he cannot hide his pleaſure at the manifeſtation of innocence, and the detection and puniſhment of malevolence.

With reſpect to the account of the trial upon the indictment, and of Mr. Partridge's ſpeech at the opening, the Editor thinks it right to inform thoſe who may chance to read the following pages, that it is given entirely from memory—but that with reſpect to the ſubſequent matter, he has had his recollection much aided by very ample ſhort-hand memorandums, which he took in the courſe of the proceedings—by means of which he has been enabled *ſtrictim, uti quæque memoria digna videbantur, perſcribere: eo magis, quod illi a ſpe, metu, partibus reipublicæ, animus liber eſt.—Igitur de conjuratione, quam veriſſume poterit, paucis abſolvet. Nam id facinus in primis ille memorabile exiſtimat, ſceleris atque periculi novitate.*

Counſel for the Proſecution.

Meſſrs. Partridge, Graham, and Le Blanc.

Attorney, Mr. Berry.

Counſel for the Defendant.

Meſſrs. Erskine, Mingay, and Murphy,

Attorney, Mr. Bell.

PROCEEDINGS at the ASSIZES at THETFORD, March the 18th, 1786, in the Trial of WILLIAM HURRY, Merchant, for Perjury, on a Traverſe of a Bill of Indictment preferred againſt him by JOHN WATSON, Mayor Elect, at the Quarter Seſſions in the Borough Court of Great Yarmouth, whence it was removed by a Writ of Certiorari into the Court of King's Bench, and ſent down thence to be tried at Thetford Aſſizes.

THE cauſe came on before Sir George Nares, Knt. and a ſpecial Jury*, at ſix o'clock in the evening. An hour and a half before the Judge made his appearance, the court began to fill, ſo that when the trial commenced, it was ſo uncommonly crouded, that the Grand Jury in vain applied to the Under-Sheriff, and through him to the Judge himſelf, to have their own box or gallery cleared. It was, at length, after much buſtle, given up as impracticable.

The caſe was opened by Mr. Le Blanc, the junior Counſel, by a bare reading, as uſual, of the indictment; in which William Hurry was charged with having cauſed John Watſon, for the purpoſe of aggrieving and put-

* Names of the Special Jury.

John Wilſon Allen, of Stanhoe,
Charles Senkler, of Docking,
Edward Parry, of Great Dunham,
Hammond Alpe, of Eaſt Lexham, } Eſqrs.
Henry William Wilſon, of Didlington,
Anthony Hammond, of Weſtacre,
Charles Colyer, of Eaſt Dereham,

Samuel Newſon, of Roydon,
Simon Poole, of Hockwold with Wilton,
Richard Tiffen, of Feltwell, } Tales-men.
Chriſtopher Adcock, of Weſt Bradenham,
John Beales, of North Lopham,

ting him to great expenſe, to be ſummoned before a court called the Court of Requeſts, in the borough of Great Yarmouth; and, not having the fear of God before his eyes, but being inſtigated by the devil, with having there taken his corporal oath upon the holy goſpels of God, falſely, corruptly, wilfully and maliciouſly depoſing, that the ſaid John Watſon was indebted to him, the ſaid William Hurry, in the ſum of eleven ſhillings; whereas, in truth and in fact, the ſaid John Watſon was not indebted to him, the ſaid William Hurry, in the aforeſaid ſum, nor in any other ſum of money whatſoever; and with having, in conſequence of this, been guilty of wilful and corrupt Perjury, to the great diſpleaſure of Almighty God, to the evil example of all others in the like caſe offending, and againſt the peace of our lord the King, in the pariſh and borough town of Great Yarmouth aforeſaid; for which ſaid offence he then ſtood indicted; and to which indictment he had pleaded not guilty, and had put himſelf upon his country.

Mr. Partridge (the leading Counſel for the proſecution) then got up: his ſpeech was in ſubſtance as follows:——

" My Lord, and Gentlemen of the Jury,

" I likewiſe am Counſel on the ſame ſide with my learned friend, who " has juſt read the record: The matter in queſtion, as ſtated by the in- " dictment which you have heard, is, that William Hurry, of Great " Yarmouth, did, on the 12th of September, in a court called the Court " of Requeſts, make an oath before Commiſſioners duly authoriſed to ad- " miniſter ſuch an oath, that John Watſon was indebted to him in the " ſum of eleven ſhillings; whereas the ſaid John Watſon was not in- " debted to him in this ſum, nor in any other ſum whatſoever; and that " he did this to aggrieve the ſaid John Watſon, and to put him to expenſe: " for this act the defendant now ſtands arraigned, on the proſecution of " the ſaid John Watſon, for the crime of wilful and corrupt Perjury.

" It is my duty, then, Gentlemen of the Jury, under his Lordſhip's " correction, to ſubſtantiate, in the preſent caſe, this fact; it is *your's* to " judge of what may be adduced in evidence, uninfluenced by your feel- " ings, from any fears of the conſequences that may, upon the defend- " ant's being fully convicted of the crime in queſtion, fall upon him.

" The crime of Perjury, in civil ſociety, is of ſo heinous and ſo deſtruc- " tive a nature, that the Legiſlature has wiſely and providently affixed to " it a high and ſevere degree of puniſhment.

" Perjury,

" Perjury, Gentlemen, conſiſts in the taking of a judicial Oath, falſely, " in a place duly authoriſed to the taking of it, and for the purpoſe of " anſwering ſome corrupt end to the perſon ſo taking it.

" I think I am pretty accurate in my definition of Perjury; I truſt then, " Gentlemen, I ſhall be able to prove, to your ſatisfaction, that the de- " fendant, William Hurry, ſtands juſtly charged with this crime.

" It has been induſtriouſly circulated through this county, by the friends " and favourers of the defendant, that this proſecution is carried on from " party motives. I have to declare to you, Gentlemen, that this is not " the caſe, but that Mr. Watſon is induced to do this from a pure regard " to juſtice, and to prevent future delinquencies. You muſt know, " Gentlemen, that in the borough of Great Yarmouth, as in many other " places in England, there is a Court of Admiralty eſtabliſhed, of which " court there is an officer, called the Judge, who, in that capacity, is " the repreſentative there of the Lord High Admiral of England; and " that there is another officer appointed, who is called the Regiſter of " this court, which officer is Mr. John Watſon, the preſent proſecutor. " The object of this court is to take under its care all anchors and cables, " &c. which are loſt at ſea (and which are taken up by men, who, from " their occupation, are called ſalvors), and to preſerve them in a place called " the Caſtle Yard, till they are claimed by the captains or owners of " them, who, upon ſwearing to their property, and paying what is called " the ſalvage, are permitted to take them again.

" It is neceſſary, Gentlemen, in order to make you fully underſtand " the matter, that I ſhould explain to you the nature of the practice or " uſage in theſe caſes. It ſometimes happens that an anchor and cable is " taken up with a buoy to it, and ſometimes without. In the former " caſe the ſalvors are entitled to one third only of the value of the anchor " and cable ſo taken up; in the latter to one half. It is likewiſe an eſta- " bliſhed cuſtom of this court, to pay for the cartage of ſuch anchors, " &c. as may be thus taken up, ſixpence per hundred weight, let them " be brought from any part of the beach or ſhore to which the juriſdic- " tion of this court extends; a kind of average takes place here, ſo that, " upon the whole, there can be no ground for any one to complain, though " in one inſtance it may ſeem too much, and in another too little.

" But, beſides this court, Gentlemen, there is another court eſtabliſhed " in Yarmouth, called the Court of Requeſts, in which a proceſs for the " recovery of all debts under the ſum of forty ſhillings may be entered, " and upon oath (before Commiſſioners duly appointed to adminiſter ſuch

" an

" an oath) being made of the ſum, redreſs may be obtained. It was in " this court that the tranſaction upon which the preſent indictment was " founded for Perjury paſſed. It happened that certain anchors and ca- " bles belonging to one Captain Shipley were taken up and put under the " care of the Court of Admiralty. The Captain, after a ſhort lapſe of " time, came, with one Mr. Samuel Hurry, who paſſed himſelf off as the " agent for Mr. Shipley, and claimed the aforeſaid anchors and cables, " paid the charges of the court, went away perfectly ſatisfied, and the " matter was ſuppoſed to be finally cloſed.

" But, at the end of ſome weeks, Mr. William Hurry, the defendant, " ſtepped forward, and declared himſelf not contented with the bill which " the Court of Admiralty had made out, reſpecting the charge of cartage " of Mr. Shipley's anchors and cables, for whom he profeſſed himſelf to " be agent. It was not, I repeat, till the end of ſome weeks—from the " 19th of July till the 12th of September—that Mr. Hurry ſued for the " recovery of this ſuppoſed overcharge of cartage. He had an obvious " purpoſe to anſwer by this delay.

" I need not obſerve to you, Gentlemen, who are well acquainted " with the ſtate of the county, that a ſpirit of oppoſition much prevails " in the town of Great Yarmouth againſt the corporation, to whom in- " deed Mr. William Hurry, the preſent defendant, has ever ſhewn him- " ſelf a moſt determined and a moſt obſtinate antagoniſt. It was then " plainly for the ſake of expoſing, as he thought, a member of this cor- " poration, that the defendant, Mr. Hurry, delayed his complaint to the " date he did, as he knew that, at that time, Mr. John Watſon, the Re- " giſter of the Court of Admiralty, would be nominated to ſucceed Mr. " Reynolds as Mayor; he having frequently expreſſed his pleaſure at the idea " of what a pretty figure the Mayor elect would make, when obliged to " make his appearance before the Court of Conſcience. Can any thing " then, Gentlemen, be more evident than the maliciouſneſs of this pro- " ceeding? He did it, as the indictment juſtly ſtates, *to aggrieve Mr.* " *Watſon.*

" I ought to have obſerved, in my account of the Admiralty Court, that, " beſides the Regiſter, there is another officer, called the Chamberlain, " who receives all moneys and gives all receipts reſpecting matters tranſ- " acted in this court. Had then Mr. Hurry, the defendant, really had " any juſt claim of a debt due to him from this court, the Chamberlain, " and not Mr. Watſon, was the perſon againſt whom he ſhould have " ſworn it.

" But,

" But, in fact, it will appear that he had no juſt claim whatſoever to " a debt of eleven ſhillings.

" It is true an account was made out, charging the cartage one pound " four ſhillings; but, upon examining into the buſineſs, it was diſcovered " that a wrong ſtatement had been made of the particulars.

" Beſides the ſixpence per cwt. for the cartage of anchors, a ſhilling is " always charged for each cart load of cable. Here, then, were two ca- " bles, one of five cwt. making one load, one ſhilling; another of 22 " cwt. making three loads, three ſhillings; a buoy and buoy-rope, one ſhil- " ling; *extra help* that was neceſſary, two ſhillings; theſe ſums, together " with the ten ſhillings and two pence for the cartage of the anchors, make " ſeventeen ſhillings and two pence. Upon the face then of this account, " it is evident that there is a miſtake of only ſix ſhillings and ten pence, " which, as in every other caſe of this kind, was to be divided, half of it " to be given to the ſalvors, and the other half to the agent of Captain " Shipley; ſo that it was not poſſible Mr. Hurry could have a right to " ſwear to more than the ſmall ſum of three ſhillings and fivepence (which " was offered to him over and over again, and as often refuſed), whereas " he poſitively ſwore to the ſum of eleven ſhillings.*

" With the practices and uſages of the Court of Admiralty the defend- " ant, Mr. Hurry, from his long reſidence in Yarmouth, and from his " frequent tranſactions with this court, was fully acquainted; hence, then, " it is evident that, from a motive of malice, and for a corrupt end, he did " wilfully, deliberately, and knowingly, take a falſe oath, in a court duly " authoriſed to cauſe it to be adminiſtered as a judicial oath.

" I ſhall now proceed, Gentlemen, to prove to you that this court was " duly authoriſed in this matter."

Here the Counſel for the defendant called out, " We admit it, we ad- mit it."

Mr. Partridge, upon this, omitted entering into the proof of it, and pro- ceeded—

" I ſhould have added, Gentlemen of the Jury, that till the time that " Mr. William Hurry ſtepped forward with his claim on Mr. Watſon, his " name was never mentioned in the affair; it was another Mr. Hurry, a " Mr. Samuel Hurry, a nephew, I believe, of the defendant, who had all

* The Judge, at this part of the opening, called for the record, and, after looking at it, told Mr. Partridge that he could not find any thing about ſalvage in the indictment, and that he could not tell what he meant to be at; that if he imagined an indictment for Perjury was to be ſupported upon a nice calculation of ſalvage, he was ſurely miſtaken.

" along profeſſed himſelf the agent of Mr. Shipley; quite another houſe,
" as we ſhall fully ſhow, not in the leaſt connected.

" If then, Gentlemen of the Jury, theſe things ſhould appear upon evi-
" dence, as I truſt they will, and which, if Mr. Hurry is in court, and
" now hears me, his own feelings muſt convince him are ſo, you, Gentle-
" men of the Jury, cannot, conſiſtently with your duty, help finding him
" guilty; and, if he be thus found criminal, notwithſtanding the former
" tenour of his life, however fair and upright it may have been (and God
" forbid that I ſhould ſay any thing to its detriment), he muſt undergo
" that puniſhment which the laws of his country have aſſigned to a crime
" of the nature and magnitude of that for which he is indicted."

Call William Imms—During the time of this witneſs's coming and being ſworn, Mr. Erſkine addreſſed himſelf to the Judge—" My Lord, I have
" the higheſt opinion of Mr Partridge; I ſhall not be conſidered as mere-
" ly complimenting him, when I ſay, I know he would be obliged to me
" if I would help him to get rid of this buſineſs, which he knows well I
" could do; but, my Lord, I muſt wiſh, for my client's ſake, that the cauſe
" may be gone into."

William Imms was ſworn.

Mr. Graham—You are an officer belonging to the Court of Requeſts?

I am.

Do you remember a ſummons being iſſued out againſt John Watſon?

I do—I ſerved it myſelf.

Here Mr. Mingay interrupted the examination with ſaying, " We allow
" it, we allow all this and much more; we admit the oath to have been
" taken; we do not come here to ground our objection on trifles, on mere
" ſtraws; call ſome of your capital men, I long to ſee ſome of their faces."

Mr. Spurgeon was then called.

Mr. Spurgeon came forward on the bench near the High Sheriff, and, on account of his apparent infirmity, had the oath adminiſtered to him in that place.

Mr. Graham—Mr. Spurgeon, you are the clerk of the Court of Requeſts?

I am.

Do you remember a ſummons being iſſued out againſt John Watſon by William Hurry?

I do.

Did the parties appear?

Mr. Hurry did—Mr. Watſon did not.

What

What is the uſage of the court in that caſe?

The officer is ſworn to the ſervice of the ſummons.

Do you remember Mr. William Hurry's taking an oath at that time?

I do—I adminiſtered it.

How?

In the uſual manner—*You ſhall true anſwer make to ſuch queſtions as the court ſhall demand of you touching the debt in queſtion.*

After he was ſworn, what did you do?

I aſked him, "Is Mr. John Watſon indebted to you, Mr. Hurry, in the ſum of eleven ſhillings?" He anſwered "He is."—I repeated the queſtion.

Upon the witneſs's being aſked reſpecting who repeated the queſtion, he heſitated whether it was he or Mr. Reynolds; but he ſaid it was either the one or the other.

Mr. Graham—Were you not in a ſituation ſo as to hear the whole?

Yes.

There being at this time a conſiderable noiſe in the court, and the Jury complaining that they could not hear the witneſs, Mr. Erſkine declared "he "had no idea of favour in theſe caſes—Why was not the witneſs in the "uſual place?—For his part, he did not like being obliged to look over "his ſhoulder every queſtion he wanted to aſk."

Upon Mr. Graham's aſſuring him, however, that he would repeat the witneſs's anſwers to the Jury, Mr. Spurgeon was permitted to keep his ſtation.

Mr. Graham—Was what you have told the court the whole of Mr. Hurry's oath?

No.

Upon the queſtion's being repeated, Mr. George Hurry (one of the Commiſſioners of the court) bending forward, ſaid, "Brother William, "explain yourſelf."—Mr. William Hurry then ſaid, "As Agent for Mr. "Shipley."

Mr. Graham—How long might this be after?

Almoſt immediately.

The Judge, on hearing this, aroſe, and called for attention: He ſaid, "It would be hard indeed, if a man were not ſuffered to explain his own "meaning; here is evidently an indictment founded on but *part* of an "oath, when that which is moſt eſſential to its meaning is left out."

Meſſrs. Erſkine and Mingay, obſerving that the Judge was ſeizing this opportunity to diſmiſs the buſineſs, both roſe up, and, with a truly laudable zeal for the reputation of their client, begged his Lordſhip to permit

the

the cauſe to go on. The Judge, however, declared, "he could not in "common juſtice; he hoped future proſecutors would take care, from the "preſent example, to prefer indictments upon juſter grounds; it was "wonderful!"—"Wonderful indeed, my Lord" (replied Mr. Erſkine warmly); "I do not believe that, in all the annals of human infamy, a "parallel caſe can be found."

The Judge then ſaid, "Gentlemen of the Jury, this is an indictment for "Perjury on *part* only of an oath, whilſt the moſt material clauſe has been "purpoſely kept back: you muſt, of courſe, find the defendant *not guilty*."

The Jury turned to one another; and the Judge mentioned to Mr. Partridge a particular caſe, in his recollection, ſimilar to the one that had then happened, but in ſo low a voice that it was impoſſible for a by-ſtander to collect it.

In a very few minutes the Jury returned their verdict—NOT GUILTY. The occaſion of their deliberating, even a moment, being a miſtake into which one of the Tales-men had fallen, that damages might then be found againſt the proſecutor. It is worthy of remark that the Jury, when they gave in their verdict, *not guilty*, added (what indeed the acquittal of itſelf neceſſarily implied, but which, however, ought to be conſidered as a marked teſtimony of their ſenſe of the defendant's innocence) *unanimouſly*.

Upon this followed—what great ſticklers for decency and propriety may carp at, but what honeſt and good feelings will excuſe—*a loud clap of approbation.*

PROCEEDINGS

PROCEEDINGS

At the laſt Summer Aſſizes for the County of Norfolk,

BEFORE

Chief Baron Skynner, and a Special Jury,

IN THE CAUSE

HURRY againſt WATSON,

When the Plaintiff was nonſuited:

With the Argument thereupon, in Michaelmas Term following, in the Court of Common Pleas, and the Judgement of that Court, as delivered by the Lord Chief Juſtice, when the Nonſuit was ſet aſide, and a new Trial granted.

" The Law and the Opinion of the Judge are not always convertible Terms, or one and " the ſame thing; ſince it ſometimes may happen that the Judge may miſtake the Law."

BLACKST. COMMENT. vol. 1. p. 71. 8vo. edit.

Counſel for the Plaintiff.

Meſſrs. Murphy, Adair, Wilſon, and Preſton.

Attorney, Mr. Bell.

Counſel for the Defendant.

Meſſrs. Hardinge, Partridge, Graham, and Le Blanc.

Attorney, Mr. Berry.

AFTER the acquittal of Mr. Hurry, in the manner which has already been related, paragraphs appeared in the Norwich, Bury, and Ipſwich papers, ſignifying that the trial of the perjury cauſe went off upon a defect in the indictment, and that a freſh bill would be preferred by the proſecutor.

Upon inquiry of the printers of theſe papers, it was found that theſe paragraphs were handed to them by one Mr. Lock, of Norwich, who declared, afterwards, in a ſubſequent account which he cauſed to be publiſhed, that he had the original, whence he took the copies which he ſent to the reſpective printers, from Mr. Watſon, the *Mayor of Yarmouth*, the *late proſecutor of Mr. Hurry*.—Mr. Hurry, learning this circumſtance, became fully determined (having had it before recommended to him by his Counſel) to bring his action againſt Mr. Watſon, for a malicious proſecution of him for Perjury.—Accordingly an action was inſtituted, and the cauſe came on to be tried at the laſt Norfolk ſummer aſſizes, before Lord Chief Baron Skynner, and a Special Jury.*—Meſſrs. Erſkine and Mingay were retained, conditionally, to attend upon this occaſion, if no other indiſpenſible engagement prevented them.—This, however, happened, unfortunately, to be the caſe.—Notwithſtanding this, the plaintiff, Mr. Hurry, diſappointed as he was of his leading Counſel, ſtill did not heſitate to proceed to lay his caſe before the court.—It was opened with great preciſion, fairneſs, and perſpicuity, by Mr. Murphy.

* Names of the Special Jury.

Sir John Berney, of Kirby Bedon, Bart.
Seaman Holmes, of Brooke,
William Perkins, of Coltiſhall,
Thomas Beecroft, of Saxthorpe,
William Wiggett Bulwer, of Heydon,
John Cuſtance, of Weſton,
Robert Buxton, of Ruſhford,
Thomas Grigſon Payne, of Hardingham,
Hugh Hare, of Hargham,
} Eſqrs.

James Fox, of Foxley,
Robert Rope, of Bloſield,
Richard Francis, of Attleborough,
} Tales-men.

The

The Counſel for the defendant, Watſon, inſtead of entering into the merits of the caſe, laid hold of certain inaccuracies in the pleadings; and, on the plaintiff's producing a copy of the record of acquittal, moved for a nonſuit upon five variances, which were all determined by the Judge for the plaintiff, or given up, except one, and that was this—That in the *declaration* it was ſtated, that Mr. Hurry was acquitted before Lord Loughborough and Sir George Nares, Knt. Juſtices aſſigned to hold the aſſizes in and for the ſaid county of Norfolk, *to hear and determine all treaſons, felonies, treſpaſſes,* and other miſdeeds done and committed; whereas, in the *record* of acquittal, it was before, &c. Juſtices aſſigned, &c. *according to the form of the ſtatute in ſuch caſe made and provided.*—Upon this variance the Judge nonſuited the plaintiff.—The Special Jury, unwilling to aggravate the charges which it was ſuppoſed this nonſuit would bring upon the plaintiff, refuſed, upon this occaſion, to accept their uſual fee.

The matter afterwards came on to be argued, in Michaelmas Term laſt, in the court of Common Pleas.

Serjeant Bolton ſhowed cauſe againſt the nonſuit's being ſet aſide—"That the matter had originated, and was ſtill carried on, from party ſpirit—that the declaration of the plaintiff ſtated a commiſſion that never exiſted, namely, Juſtices of aſſize ſpecially aſſigned *to hear and determine, &c.*—that the record to which they referred for proof of acquittal ſtated only *Juſtices of aſſize*—that this was a material variance—that in many inſtances where the variance was not ſo material, the plaintiff had been held to prove what he had ſtated, and upon failure thereof had been obliged to take the conſequence.—In corroboration of theſe opinions, he had recourſe to caſes: The firſt he quoted was from 2d Strange, 787. where the word *auſtriale* being put inſtead of *auſtrale*, which was the true ſpelling, it was conſidered by the court as a ſufficient variation on which to ground a nonſuit—The next was from Holt, 538. where *Lincoln's Fields* was put for *Lincoln's Inn Fields.*—A third caſe he produced was from the ſame reports, where, in referring to a particular act of parliament, the declaration had *unneceſſarily* ſtated the title of it, and had ſtated it with ſome trifling variation—A fourth was where a declaration ſet forth certain money to be paid at four even quarterly payments, whereas it could only be proved that the ſaid money was to be paid within the year.—On the authority of theſe caſes he contended that the nonſuit was a juſt one; and that the variation upon which the Judge directed it was much more material than any of theſe.

Serjeant

Serjeant Rook, on the ſame ſide, argued—that this was a proſecution for a malicious proſecution—that it was a proſecution in revenge, and that therefore it ought not to be favoured by the court—that the bill of indictment had been found by a Grand Jury—that the plaintiff, in the preſent caſe, was bound to prove his acquittal before a *general* court of aſſize, but his declaration ſtated, that he was acquitted before a *ſpecial* court of aſſize, "*Juſtices of aſſize, to hear and determine, &c.*"—The record does not prove this, but the contrary—that, from the nature of the ſuit, the exact rule of law ſhould be obſerved.

Mr. Serjeant Adair, in reply, declared—he did not apply to the court on the ground of having the forms of law given up for the ſake of ſubſtantial juſtice—he was certain this nonſuit muſt be ſet aſide by the plain rules of law. He ſpoke to the ſeveral caſes which had been cited, and then contended—that the declaration and record were eſſentially the ſame—that a Judge of aſſize was a Judge who had five commiſſions—that *oyer and terminer, &c.* was one of theſe commiſſions; the commiſſion of aſſize another; the commiſſion of general gaol-delivery another; the commiſſion of the peace another; and, laſtly, the commiſſion of niſi prius, which enables him to try all queſtions of fact iſſuing out of the courts of Weſtminſter.—That the record ſaid Mr. Hurry was acquitted before "*Juſtices of aſſize;*" that the words added were *inſenſible, impertinent words*; that the declaration, in ſtating Juſtices of aſſize, had ſtated every thing that was neceſſary; that there was no occaſion to argue the matter; that there were caſes that could not be controverted.—He then produced a caſe from Crook 2, 32. where Juſtices of the peace were deſcribed as Juſtices of the peace, with the *additional words to hear and determine, &c.*—When he found this caſe, he declared, he was quite ſatisfied, provided he did not, upon inquiry, find it contradicted in any ſubſequent caſes. He aſſured the court that he had not done this, but quite the contrary. He then quoted another caſe, where the declaration ſtated an indictment to have been preferred at the *quarter* ſeſſions, whereas, in fact, it appeared to have been at the *general* ſeſſions.—The nonſuit was ſet aſide upon this principle, that either of the courts was competent to the taking cognizance of the buſineſs. He contended that this was a caſe perfectly in point—that it ran on all fours with the preſent caſe—that as the word *quarterly* was a *ſurpluſage*, the court being ſufficiently defined without it, ſo *Juſtices of aſſize* was a ſufficient deſcription of the perſons before whom Mr. Hurry was acquitted, and that the words *to hear and determine, &c.* were inſenſible and

impertinent.—Mr. Serjeant Walker argued on the ſame grounds: and the next day the Lord Chief Juſtice delivered the following judgement.

It is our opinion that the nonſuit ought to be ſet aſide, and a new trial granted.—The queſtion has been argued on two grounds—1ſt. That the words added in the declaration make nonſenſe; deſcribe a commiſſion that never exiſted; and 2dly, That the commiſſion ſet forth in the declaration differs from that ſet forth in the record, and that therefore it has not been proved.

The ſecond point is the only one taken notice of at the trial, upon which the learned Judge directed the nonſuit.

If the firſt point had been made out, it would have been a juſt ground on which to have moved an arreſt of judgement; and if it were clearly to be made out, the court would not ſet aſide a nonſuit on which no judgement could be given.—I ſhall take notice of this hereafter.

I allow that in this action it is eſſentially neceſſary to ſtate an acquittal before perſons properly authoriſed.—If, therefore, the declaration had proceeded to ſtate that the plaintiff had been acquitted before Juſtices of aſſize, and had ſet forth all the different commiſſions under which they acted, and it had happened that the record of acquittal had recited likewiſe all the ſeveral commiſſions, the declaration would not have been bad, and the proof had been complete;—but it is plain that all the words ſubſequent to Juſtices of aſſize would have been perfectly nugatory.—The record of acquittal ſtates only "*Juſtices of aſſize.*"—It is not a defective record—it is full proof of the acquittal by due courſe of law.

The declaration ſtates "*Juſtices of aſſize,*" but it goes on to add more words, "*to hear and determine, &c.*" Now it is material to take notice of what is here added.—The addition, in this caſe, is a deſcription of the perſons who held the aſſize—but this, it has been ſaid, is not proved.—But conſider what is to be proved.—It is not every adjective that is ſubſtantially to be proved.—You want to prove a propoſition, an averment in the declaration, and a neceſſary one, that the plaintiff was acquitted before Juſtices of aſſize; not that Juſtices of aſſize are Commiſſioners of oyer and terminer, to hear and determine, &c. What has this to do with the action? Their having this commiſſion was totally irrelevant to the queſtion.—It might as well be ſaid to be neceſſary to have declared and proved the names of the Juſtices as well as their offices.

There are certainly caſes of various determination.—I am not ſure whether I am able to find any compaſs by which to ſteer on to a point through theſe various determinations.—If the plaintiff chooſes to inſert circumſtances,

ces, he may be bound to prove them; but they muſt be circumſtances that bear ſome relation to his caſe; they muſt belong to it, and muſt not be totally different from it.

In moſt of the caſes where the plaintiff has been nonſuited, this is, or has been ſuppoſed to be, the nature of the circumſtances, by the court in which the circumſtances have been alledged.

In the caſe of Briſtow and Wright, the court had their doubts whether the variation of the evidence, which proved only on a demiſe *rent to be paid yearly*, was a material one from the declaration, which ſtated that the *rent was to be paid by four even quarterly payments*.

There were two caſes produced from Lord Raymond; the firſt does not at all apply.—This ſtates that the declaration ſet forth an agreement for good *merchantable* wheat; whereas it was proved in evidence that only wheat of a *ſecond quality* had been ſent.

The ſecond caſe is undoubtedly rather a nice one.—It was an action of debt for rent.—The plaintiff declared on a demiſe for a *rent of* 15*l.* the evidence proved a demiſe for 15*l.* and *three fowls*.—Chief Juſtice Holt thought this a material variance.—But as a proof that nonſuits are directed juſt as particular circumſtances ſtrike perſons at particular times, in the very ſame caſe it was urged, as another ground for a nonſuit, that this eſtate was let by a *ſpecial* power of leaſing in only a tenant for life, as if he had had a *general* power of leaſing; but this, my Lord Holt, did not think ſo material a ground for the nonſuit as the other.

It may be difficult to ſay what is a variance.—I own my Lord Holt ſeems to have thought the queſtion was, whether the variance was material or not, and whether the circumſtance was relative to the caſe of the party; which, if he had omitted, would not have hurt him, but not having done ſo, it became neceſſary for him to prove.

But I have found many caſes where this doctrine ſeems to be contradicted.—Rolls abridgement 2. 709, Placito 59.—This was a caſe in which there was a variance of date.—When this caſe occurred it ſtruck me, that all the ground of the doctrine, which is ſo familiar to the court, is, that it is not neceſſary to prove every thing under a *videlicet that is not eſſential to the caſe*; every *thing eſſential indeed*, even under a *videlicet* or *ſcilicet*, it would be neceſſary to prove.

In the other caſes, and in the caſes moſt applicable to the preſent, where the parties have occaſion to refer to a judicial proceeding, the *mode* in which this proceeding is conducted does not make a part of the caſe, but the reſult of it does.—See Hobart 79, Hobart 209, Brooke's abridgement, placito

placito 96, title variance.—Here it was urged that the Jury had taken a falſe oath before *B.* and *R.* Juſtices of niſi prius, it having been taken before *B.* who had aſſociated to him one who was *R.* the court over-ruled this.—There are ſeveral other caſes in Dyer's Reports—There is one, Dyer 29, placito 141.—The queſtion here was, whether the writ of attaint ſhall abate, becauſe of a variance in the writ of attaint, and the proceedings by which the writ is brought.—It was held to be no variance *omitting circumſtances* in the deſcription of the writ of attaint in the record of niſi prius, provided the *ſubſtance* was well deſcribed.—But the caſe of Buſby and Watſon, Blackſtone 2, 1050, is a ſtronger caſe than the preſent.—The court of *general ſeſſions* and *quarter ſeſſions* are different courts, but ſtill having both the ſame juriſdiction with reſpect to the particular matter, the declaration was held to be ſufficiently ſupported.

In the preſent caſe, then, it was neceſſary that the plaintiff ſhould ſtate that there had been a judicial proceeding; the chief thing required was to prove that this judicial proceeding was under competent perſons; theſe were "*Juſtices of Aſſize.*"—This authority was ſufficiently defined in the *record*; it was ſufficiently ſet forth in the *declaration*; the additional deſcription gave no authority; the *converſe* of the *preſent* caſe would have ſtood as well as the *preſent*.—If the other commiſſions had been *added* in the *record*, the *leaving them out* in the *declaration*, would not have been a fatal variance.

As to the firſt objection, that the words are nonſenſe if taken literally, it admits of this anſwer—that, be it ſo, they will not nonſenſe ſenſe; they do not make the propoſition in the declaration nonſenſe; it is a clear, and explicit, and intelligible propoſition.

The difficulty, in all theſe caſes, does certainly enough ſpring from a deſire to accompliſh that object which my Lord Mansfield has mentioned in the caſe reported in Douglas.—And I am very apt to think that the ambiguity and prolixity of pleadings ariſe from the extreme care which practitioners think themſelves bound to take, in order to avoid every poſſibility of the court's ſtopping their proceedings.—I flatter myſelf that the beſt way to avoid any thing of this kind, would be, to truſt themſelves with confidence to the liberality of the court, rather than ſtuff their pleadings with unneceſſary circumſtances; although, it muſt be confeſſed, the courts have been more ready to allow objections like the preſent, than to diſcourage them.

NOTE.

It is hoped that the above account will be read with candour, as the editor is not aſhamed to acknowledge that he is but little accuſtomed to the reporting of law arguments.

PROCEEDINGS

PROCEEDINGS

At the Aſſizes at Thetford, on the 24th of March, 1787,

BEFORE

Mr. Juſtice Aſhurſt and a Special Jury,

IN THE CAUSE

HURRY againſt WATSON,

With the Speech at length of Mr. Erſkine for the Plaintiff,
And that of Mr. Hardinge for the Defendant;

When a Verdict was found for the former. Damages 3000l.

Inſidiator ſuperatus—Oppreſſa virtute audacia eſt. Cic. pro Milon.

Counſel for the Plaintiff.

Meſſrs. Erſkine, Mingay, Murphy, Adair, Wilſon, and Preſton.

Attorney, Mr. Bell.

Counſel for the Defendant.

Mr. Hardinge, Mr. Serjeant Le Blanc, Mr. Partridge, and Mr. Graham.

Attorney, Mr. Berry.

Gentlemen of the Jury,*

ALTHOUGH I am totally a ſtranger in this country, and, conſequently, have not the honour to know any of you, yet, I confeſs, it gives me pleaſure to learn from my friend here (Mr. Mingay) that I am addreſſing men of the firſt diſtinction, not only for property, but for all thoſe qualities which you will be called upon to exerciſe upon this occaſion.—That I am addreſſing men who know the value of character—that ſome of you have been merchants, who muſt be peculiarly open to the impreſſion of thoſe circumſtances, which in honour, duty, and feeling, I am now bound to lay before you.—You know, Gentlemen, the nature of that proſecution which now brings you here.—And, perhaps, it is the ſtrongeſt obſervation poſſible with which I can eſtabliſh its nature, that you know the injury which has given riſe to it.—All of you know it.—The ſound of it has gone forth into all lands.—There is not a place nor ſcarce any part of the civilized world where the honor and credit of an Engliſh Merchant is of any value, or where the knowledge of a private individual can travel, where this report has not been trumpetted.

There is not a perſon who now hears me who does not know that the Plaintiff, whom I have now the honor to repreſent, was, not a twelvemonth ago, ſtanding here in a thouſand times a worſe ſituation than the felons who have this morning been tried on the other ſide of the court.

* Names of the Special Jury.

Sir Martin Browne Folkes, of Hillington, Bart.
Thomas Beecroft, of Saxthorpe,
Richard Wright, of Eaſt Harling,
John Lloyd, of Pentney,
Anthony Hammond, of Weſtacre,
George Nelthorpe, of Lynford,
Thomas Lobb Chute, of South Pickenham,
William Birch, of Great Creſſingham,
Henry William Wilſon, of Didlington,
Robert Knopwood, of Threxton,
} Eſqrs.

Zachariah Death, of Diſs,
William Ripper Coe, of Attleborough,
} Tales-Men.

Mr.

Mr. Hurry, diſtinguiſhed, and remarkably diſtinguiſhed, as a man of probity and goodneſs in every one of the ſeveral relations of ſocial life—againſt whom the breath of ſlander had never ſtirred—This Gentleman—never called to account for any thing that diſgraced the character of a man, a merchant, a gentleman, or a chriſtian—ſtood here, I ſay, in a far worſe ſituation than the commoneſt felon.—By the inſtigation of Mr. Watſon, he was here arraigned, as a man who had caſt off every thing that marks the worthy—branded with the groſſeſt turpitude that can diſhonour a human being—and repreſented as a wretch, that had neither ſenſe of religion, nor fear of ſhame.

Now, Gentlemen, need I ſay more to impreſs you with the juſtneſs and propriety of this action, than to aſſure you that this innocent and injured man does not come here merely to reimburſe himſelf for the expenſes to which he has been run—to recover back the money which he has been forced to lay out to defend himſelf againſt one of the moſt flagrant attacks that could poſſibly be made upon him—but becauſe there is no other way to recover that good name, that peace of mind, that ſecurity, that reſpectability in ſociety, without which even conſcious innocence can give but feeble pleaſure.

Mr. Hurry, Gentlemen, comes here as a good citizen—to hold out his perſecutor as a public example, in order that, by his puniſhment, the peace and well-being of civil life may be preſerved—and that the innocent and the good may enjoy, unmoleſted, that credit which their conduct merits.

Nothing can be further from my purpoſe than to miſrepreſent to you the nature of this action.—It would, indeed, be folly to attempt it.—My learned friend (meaning Mr. Hardinge) and I ſhall have no difference on this point.—I am perſuaded my obſervations, in this reſpect, will every one of them be confirmed by his.—I will give him all the benefit of the obſervation.—You do not, Gentlemen, ſit here to judge of Mr. Hurry's innocence—the record of acquittal marks it—and that it does not follow of courſe, that becauſe my client is innocent, that therefore Mr. Watſon is guilty.—There may be circumſtances which may induce the propriety of putting a man upon his trial, which may juſtly ward off the conſequences of an action againſt his accuſer, although he is moſt honourably acquitted.—I give my learned friend all the benefit of theſe obſervations; and therefore, Gentlemen, if, from the evidence that ſhall be given in the courſe of this cauſe, you ſhall be of opinion—that Mr. Watſon, with a pure upright intention, looking only to the rights of mankind, and believing that Mr. Hurry had caſt off all ſenſe of duty to his God and his fellow-creatures,

endeavoured

endeavoured to bring him to deſerved puniſhment —If you are of this opinion, I will not call upon you now to convict him.—But ſhould you be of opinion that Mr. Watſon was not thus actuated, but that he was influenced by motives of a far leſs honourable nature, by motives of ſpleen, reſentment and malice, then I am vindicated in ſaying that there are no damages that can be called ſevere and exemplary damages, which you, as an Engliſh Jury, can give to my client—for there is no act that can be marked with worſe features of turpitude, than the endeavour to ruin and take away the credit and character of a fellow-being.

It will of neceſſity happen in ſmall boroughs, ſuch as Yarmouth, that there ſhould, at different times, be a variety of intereſts.—In ſuch communities it will, it does often, happen that there are differences of opinion, that give riſe to bad blood, and to unfavuorable wiſhes, which ought not, however, to break out as they have done, in the inſtance now before you.—Mr. Watſon and Mr. Hurry are, as I am inſtructed, in different intereſts.—And though I cannot prove any *expreſsions* of malice, vulgarly ſo called; yet, from the circumſtances in the conduct of Mr. Watſon, which I ſhall prove, you will be fully able to collect that he muſt have had it in his heart.

Mr. Watſon is Regiſter of the Court of Admiralty—Mr. Reynolds, his partner, was Judge or Preſident of a court call the Court of Requeſts, for the adjudication of ſmall debts.—Mr. Watſon is an attorney—Mr. Reynolds, as I ſaid, is his partner, not, I hope, Gentlemen, in this iniquitous buſineſs—but in trade.

It happened that a ſhip, called the Alexander and Margaret, was obliged, by ſtreſs of weather, to leave her anchors and cables in Yarmouth Roads, which were taken up by men employed for that purpoſe, and lodged, after being paid for the ſalvage of them, by Mr. Watſon, the Regiſter of the Admiralty Court, in the place appointed for their reception.—The plaintiff had no intereſt originally in theſe materials—no concern with the ſhip; which was the property of another; of a Mr. Bartleman; and the captain's name was Shipley.—This Shipley, the captain, was directed, by his owner, to apply to Mr. Hurry, to whom he had previouſly written, to procure for him again the anchors and cables in queſtion, out of the cuſtody of the Court of Admiralty, and to pay the expenſes incurred.—Mr. Hurry did ſo; but, when he received the bill of charges, he objected to the article of cartage, as being too much.—Moſt undoubtedly, if there is one thing that requires a ſcrupulous attention more than another, it is, that perſons wrecked ſhould not be impoſed upon.—Notwithſtanding our na-

tional character for humanity, there are many inſtances with reſpect to theſe matters, which are a diſgrace to us.—Now, though I am not inſtructed to ſay that Mr. Watſon and Mr. Reynolds have been guilty of extortion in theſe reſpects; yet, I may ſay, that it was the duty of Mr. Hurry to take care that they ſhould not.—Mr. Hurry required an account —in conſequence of this requiſition, a bill was given him, in which bill Mr. Watſon, in his own hand-writing, and ſigned by his own name, makes the following charges:

" Charges on two anchors and cables belonging to captain Shipley.

	£.	s.	d.
Salvage	14	5	0½
Poundage	0	7	0
Cartage	1	4	0
Court Fees	1	12	3
Regiſter	0	12	0
Marſhal	0	4	0
John Watſon"	£. 18	4	3½

Mr. Hurry, looking over this bill, takes exceptions to no item in it but one, that was the item for cartage.—And how did this item affect Mr. Hurry?—was it his own intereſt that was concerned? No—He was acting as the honeſt ſervant of a perſon who had ſuffered by diſtreſs.—It was his duty to be ſcrupulous to a farthing.—I own, as to myſelf, I ſhould not, and would not, be ſo exact as to trouble myſelf much for the value of a ſhilling or two—it might be conſtrued as captious in me if I were—but, as ſtanding in the ſhoes of another, I would have my demand even to a mite. —Mr. Hurry, then, acted naturally and properly in this caſe, in objecting as he did.—One feels a reluctance to ſpeak, in the preſence of a perſon ſo near one, of a tranſaction which, from its commencement, hath hitherto been ſo diſgraceful to him.—But, let us look to this article in queſtion— for cartage 1l. 4s.—Mr. Hurry ſaid this was an overcharge—not becauſe the weight of the anchors, the quantity of the cable, the diſtance where they were carried, were not what they were alleged—it was not on any of theſe accounts.—He admitted the weight, quantity, and diſtance, &c. —All theſe things were perfectly underſtood.—All Mr. Hurry ſaid, was— taking the anchors at the weight ſtated; the cables at the length mentioned; and the diſtance as aſſerted; yet, ſtill I am of opinion that you have demanded more than is reaſonable; I think 16s; but I will demand the return of only 11s; becauſe the form of the court where I am to make this

this demand requires the taking of an oath.—And what did Mr. Hurry do before he followed the impulſe of this his opinion?—He inquired of his acquaintances—they confirmed him in his opinion.—He made the demand upon Mr. Watſon —Mr. Watſon refuſed to grant it.—Mr. Hurry had now nothing to do, but either to abandon his claim altogether, or to ſummon Mr. Watſon into that court, which, by this clauſe which I will now read to you, has cognizance of ſmall debts under the value of forty ſhillings —" And be it enacted by, &c. that it ſhall and may be lawful to and for any perſon or perſons, &c. who now hath, or hereafter ſhall have any debt, &c. under the value of forty ſhillings, &c. owing unto him, &c. to apply to any one of the perſons mentioned in the commiſſion, who ſhall immediately make out and deliver to one of the Serjeants at Mace, &c. a ſummons in writing, &c. directed to ſuch debtor, &c. expreſſing the ſum, &c. And that, upon proof made that ſuch ſummons hath been duly ſerved, &c. the Commiſſioners, any three or more of them aſſembled in court, &c. are empowered to make due inquiries, &c. and to make ſuch orders and decrees therein, and paſs ſuch final judgement or ſentence thereupon, and award ſuch coſts of ſuit, as to them ſhall ſeem moſt agreeable to equity and good conſcience."

Mr. Hurry applied to this court thus conſtituted—a ſummons was iſſued.—Before this ſummons was iſſued, it was perfectly underſtood what the nature of the difference was.—I ſpeak it in Mr. Watſon's preſence, as he there ſits.—He knew there was no diſpute about a fact—that it was a queſtion that might fairly and honourably have been tried in the Court of Requeſts—and I have no ſcruple in aſſerting, in the face of this multitude that now ſurrounds me, that there is nothing diſreſpectful in demanding of another, what you think you have a right to have granted you.—What was the diſpute?—It was, whether Mr. Watſon ſhould or ſhould not return Mr. Hurry eleven ſhillings which he had overcharged him.—Mr. Reynolds, the Mayor, was the Preſident of the court where Mr. Hurry made the demand.—If he had thought Mr. Watſon ought not to return the money; Mr. Hurry would not have been offended.—He had not charged Mr. Watſon with corruptly with-holding it.—He did not hold him out as a man capable of cheating him.—He only wanted the court to determine, which of the two opinions was the juſt one.—Gentlemen, attend to this.—Mr. Watſon was ſummoned—he did not appear.—Mr. Reynolds, who was his partner, and acquainted with every particular of the tranſaction before he came into court, ſat as Judge.—I ſpeak this in the preſence of a Judge who would bluſh to be inſtructed by any party before hand.

hand.—I ſpeak it in his preſence who will feel its weightthat; this Mr. Reynolds, Preſident of the Court of Requeſts, and Judge of the Court of Admiralty, who ought not to have taken up any antecedent opinion upon the caſe, was fully inſtructed, as appeared from a written paper which he had in his pocket, in every minutia of this buſineſs.—If I ſay any thing againſt Mr. Reynolds; he is in court; he maybe called upon to contradict me: I am not ſworn; I am but the repreſentative of another: He may be ſworn; and if he is put upon his oath, I ſhall then, perhaps, be able to ſtrike from him ſome ſparks which will throw ſtill further light upon this dark buſineſs.—But why did not Watſon attend?—Had he attended, might not he and Mr. Hurry have ſhaken hands?—What would Mr. Hurry have ſaid?—Would it not have been this?—Mr. Watſon, I do not come here to complain of you as a cheat or an extortioner. It is not a fact about which we differ; it is a matter of belief and opinion. this court ſhall decide for us.—But it was ſettled otherwiſe.—My unfortunate client was marked out for a victim.—They had a ſnare prepared for him.—He was hunted into the toil, and cruel and perſevering was the chace.—Mr. Reynolds, an attorney (take that along with you, Gentlemen) had lying by him, during the time that Mr. Hurry was ſwearing to his demand, the act of parliament, with the clauſe, marked ready, which ſhall be read to you preſently.—This Mr. Reynolds, bred an attorney, practiſing as an attorney, could believe that that court, in conſequence of this clauſe, had no juriſdiction with reſpect to the matter that formed the foundation of Mr. Hurry's oath.—The clauſe of the act is this.—" Provided alſo and be it enacted, by the authority aforeſaid, that this act, or any thing herein contained, ſhall not take away, limit, or leſſen the juriſdiction of the Court of Admiralty, held in and for the borough and port of Great Yarmouth aforeſaid, by virtue of certain royal grants or charters; but all cauſes lawfully cognizable in that court, may continue to be commenced, proſecuted and determined therein, according to the uſual courſe and practice thereof, as heretofore hath been; any thing in this act contained to the contrary notwithſtanding."—Now, what does this clauſe ſay?—Not what does it ſay to an attorney; but what does it ſay even to a common perſon?—Would not any man clearly perceive, from this clauſe, that there was, between this Court of Requeſts and the Court of Admiralty, what we lawyers call a concurrent juriſdiction?

But Mr. Watſon did not attend—Mr. Reynolds, with the paper in his pocket in which every particular had been ſpecified to him by Mr. Watſon, did—not to determine the cauſe; for, in his then opinion, the court

court had no juriſdiction.—Would it not have been full as decent if Mr. Watſon had attended himſelf?—Would it not have been full as decent if Mr. Reynolds had produced this paper, which, in his idea, ſet the whole matter in ſo clear a light, at the very firſt?—Theſe events might have fruſtrated the whole plan.—The Mayor adminiſtered the oath —" You ſay that Mr. Watſon is indebted to you in eleven ſhillings.—To which Mr. Hurry replied—yes.—Now I here lay it down as a point of law, that any man, as an agent for another, may ſwear to a debt, as due to himſelf, which has accrued through his agency.—If my ſervant ſells any thing for me upon credit, moſt undoubtedly, either I or he may ſwear to the amount of the ſum due, upon occaſion.—But if it were, that a man could not ſtrictly ſwear to a debt of this kind, without the additional terms expreſſive of the agency, what muſt we think of endeavouring to draw a man into perjury, by tricking him into taking an oath, with the omiſſion of theſe ſuppoſed eſſential terms?—And was not this the conduct of theſe men in this caſe?—They thought Mr. Hurry was in the trap; but to make him ſtill more ſure, the queſtion is repeated.—Do you ſay that Mr. Watſon is indebted to you, William Hurry, in the ſum of eleven ſhillings.—Upon this repetition of the queſtion—Mr. George Hurry, one of the Commiſſioners of the court, ſaid, Brother, explain yourſelf.—Upon which, Mr. Hurry added—as Agent for Mr. Shipley, and as appears upon the face of this bill (producing this bill, Mr. Watſon's own hand-writing) I get nothing by it.—Why, Gentlemen, this is an oath of reference—" as appears by this account."—I proteſt to you that the annals of judicature, in high or low tribunals, in thoſe worſt of times, which we cannot look back upon without fear and trembling, do, in no inſtance that I can recollect, exhibit ſo miſchievous and wicked an attempt at injuſtice, as the one now in proſpect before you.—No ſooner had theſe men got this Gentleman, as they thought, into the toil of Perjury, than Mr. Mayor turns to the act of parliament, and ſays that the court had no cognizance of the matter.—Did he not know this before?—Could he not have informed Mr. Hurry and the Commiſſioners of this, before Mr. Hurry had taken his oath?—Yes; but then they could not have ſaid, " We have caught you—we have now an opportunity of reducing you to contempt, of fixing a ſtain upon you that ſhall blaſt you for ever."—But no indictment can be maintained againſt a man for an oath taken in a court that has no juriſdiction with reſpect to the matter of the oath.—Mr. Reynolds, though folly had before, as is frequently the caſe, blinded wickedneſs, recollecting that this fact was an abſolute ingredient in the conſtitution of a Perjury—in two

days—in two days after that he and Mr Watſon had obliged Mr. Hurry to take the oath which he did, and of which they ſaid the court could not take cognizance, when they found it became neceſſary in order to ſupport the indictment, this mutable and tranſitory court was by them voted to have juriſdiction.—I do not know how to keep myſelf in tolerable coolneſs, when I am ſtating the matter.—What would have been the conduct of a humane and good magiſtrate in this buſineſs, when it firſt came before him?—Would he not have adviſed Mr. Hurry to ſettle the matter with Mr. Watſon when he ſhould be preſent?—Would he not have endeavoured to mediate juſtice between the parties, and to have reconciled and compoſed all their differences?—And did Mr. Reynolds thus act?—No—he ſuffers Mr. Hurry to take an oath, and then tells him—you can have no redreſs—the court has no juriſdiction.—On the morning the court has a juriſdiction, and is clothed in all its ancient dignity.—This man was an attorney—he knew, he had ſtudied, the clauſe of the act.—It was, I doubt not, thumbed over ſo black that you could hardly read it—yet this man, thus competent to decide, thus varied, as it ſuited his purpoſe, his opinion reſpecting this court—which ſeems indeed to have had a kind of legal ague—it now had not a juriſdiction, becauſe Mr. Hurry had a claim to eſtabliſh—it now had a juriſdiction, becauſe Mr. Hurry muſt be indicted for Perjury.

You have now, Gentlemen, done me the honour to attend to what I have been ſaying, in proof that there was no fact diſputed between the parties, but that it was a mere matter of opinion.—Now I will put it to his Lordſhip, whether this can poſſibly be a ſubject-matter of an indictment for Perjury.—If a man ſells me two or more pair of ſhoes, for which, upon oath, he claims a debt of eighteen ſhillings, and I am of opinion that the ſhoes are worth no more than ſixteen ſhillings, ſhall I indict him for Perjury? The ſuppoſition is ridiculous. I repeat it again, and again, that to make an oath a ſubject-matter for a criminal court, it muſt be the aſſertion of a fact, that is known to be falſe, from a corrupt motive.—Now what fact did Mr. Hurry ſwear that was not admitted between the parties?—that there were no anchors—no cables—that they were carried no diſtance, or the like? No ſuch matter.—Or, what object had he in view in taking the oath? Was it to put a large ſum of money into his own pocket?—No—it was only to ſave a very little one in the pocket of another.—Let me ſuppoſe Mr. Watſon ſitting at his deſk, in his office, as an attorney, and a countryman coming in, and aſking him his opinion reſpecting proſecuting for the crime of perjury, on account of exactly

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ſimilar circumſtances as have been ſtated in this caſe, a gentleman, a merchant of the firſt credit and reputation—a perſon againſt whom the tongue of ſlander had never wagged—What would be his advice?—Would he not ſay—I would adviſe you to be let blood? Would he not ſay—attend to this—can there be any malicious, wilful, corrupt perjury, without motives? Can it be conceived that a man, in flouriſhing circumſtances, can run counter to his conſcience, and abandon all his right to the approbation and eſteem of his fellow citizens, to put eleven ſhillings into the pocket of another?—Beſides this, my friend, you ought to recollect that it is not a fact about which you are aſking my advice, but it is a mere matter of opinion.—I remember that great and auguſt magiſtrate, who has lived ſo long to his own credit, and to the benefit of ſociety, and whoſe loſs, in all probability, we ſhall ſoon have to deplore—I ſpeak of my Lord Mansfield—I remember his ſaying, when a man was indicted for perjury, for ſwearing that a wall was ſeven feet high, whereas it was only ſix feet—What! indict a man for perjury for a matter which the application of a foot-rule would have ſettled for the parties! and he inſtantly threw the record over the table.—There is the caſe, likewiſe, of Carnan, the bookſeller, who was indicted for ſwearing to one horſe as his, when another, which was proved to be his, was found dead in a ditch.—The learned Judge would not try the cauſe—He ſaid, the defendant ſwore certainly to the beſt of his knowledge at that time, and, no doubt, believed, however miſtaken he might be, that he was claiming his own property.—Now, here ſome motive of intereſt might be imagined operating, as the value of a horſe is ſomething—But in the caſe of Mr. Hurry, there was nothing upon earth that could be conceived capable of having upon him the leaſt poſſible degree of influence to commit the act for which he was indicted—Mr. Hurry is a merchant of the firſt reſpectability and credit—the ſum which he claimed was of the moſt trivial nature—and he was but an agent in the buſineſs.—But, Gentlemen, only conceive how theſe Attornies conducted themſelves, and what ſhifts and wiles they had recourſe to, in the different ſtages and management of the buſineſs they had taken in hand.—The money claimed was not, ſay they, due to Mr. Hurry—It was not due from Mr. Watſon—it was due from a Mr. Munfor, the carter, to whom Mr. Watſon had transferred it.—Good God! how is a man to deal with ſuch perſons as theſe? One is in danger, abſolutely, of being indicted by them for being a Lawyer.—But I aſſert that, if Watſon was paid a ſum of money of Hurry's, we have a right to look to Watſon for that ſum. An action would lie againſt Watſon at the ſuit of Hurry, although

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the money were no longer actually in his hands, but he had paid it over to another. What advice Mr. Watſon would give in this caſe, I will not undertake to ſay—My learned friend, I doubt not, fully coincides with me in this point.—But it may be ſaid, that the conduct of Mr. Watſon, and the bill which he preferred againſt Mr. Hurry, were left to the conſideration of a court of open judicature.—I proteſt, had he had recourſe to a Grand Jury of the county, there might have been ſome reaſon to believe that he was actuated by motives not utterly diſgraceful to him.—But Mr. Watſon dared not to do this—He was conſcious no Jury, but ſuch as was made up, in a great meaſure, of his relations, friends, and connections, could, or would, anſwer the purpoſe he was wiſhing to get executed.—I do not mean to ſay that every man that ſat upon that Grand Jury, which found the bill againſt Mr. Hurry, was a corrupt man.—It was, however, the Grand Jury of a Corporation.—It was a limited Jury—of a local juriſdiction.—I wiſh to God there were fewer of them in theſe kingdoms.—What would be the conſequence, if there was not a power of removing, by writ of Certiorari, any indictment of which theſe local juriſdictions take cognizance, to the higher and more impartial tribunals of Juſtice?—What would have been the conſequence to my innocent client in the preſent caſe?—Would he not have been convicted by the influence of the ſame men, who, after having hunted him into the toil, would have eaſily found means to have finiſhed his deſtruction?—That was their object—We will get, ſaid they, a Petty Jury to ſecond, by their verdict, what the Grand Jury has laid a good foundation for—Then his character is undone—he is caſt off, as a ſtranger to the comforts of ſociety—and we ſhall riſe, triumphant, upon his fall.——The thing was well imagined, and it wanted but little to completion.——But, Gentlemen, what will you ſay to theſe men, when you find that they durſt not truſt even a Jury conſiſting of their own relations and friends, but with a mutilated and garbled oath?—I do not believe, indeed, that if a man had preferred a bill of indictment for Perjury, upon the grounds of the oath as it was actually taken by Mr. Hurry, even to a Jury of his own twelve ſons, all of whoſe exiſtences depended upon his abſolute will and pleaſure, that he could have gotten them, if they had the leaſt degree of regard to honour, or to conſcience, to have found the bill.—But Mr. Reynolds did not take a note of all that was ſworn—not a word about agency—not a word of an account—nor of "I get nothing by it"—All he noted down was, that Mr. Hurry ſwore that Mr. Watſon was indebted to him eleven ſhillings—ſo that even this Grand Jury could be truſted only to a certain extent—only with a mutilated and garbled oath.

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—When they had thus far ſucceded, they did not imagine that they would not have been able, by a Petit Jury, to put a finiſhing ſtroke to the matter. —But, thanks to the wiſdom and equity of our anceſtors, who have ſo wiſely ordered that the operation of local prejudices, in theſe miſerable juriſdictions, may be providently prevented, by a reference of our cauſes to the deciſion of courts where Juſtice, indeed, holds an equal balance. —The Borough court of Colcheſter, very lately exhibited a wretched inſtance in proof of the propriety of my remark.—A very reputable farmer was actually committed to gaol, as a felon, for having ſtolen ſixpence out of a bag belonging to a gleaner, whom he had deſired to go out of his field; and, but for a certiorari, would, in all probability, have been found guilty, as he would have been tried in that court where the recorder, who was principally inſtrumental in getting him committed, would have ſit as his Judge.—And when the Counſel for the proſecution argued againſt his being tried in any other court than that in which the indictment was found, Juſtice Gould ſaid, "Good God! he may be tried here, or any where;" and thereupon the matter was given up.—Certain it is, that ſome pictures are for one ſituation—ſome for another—The bill of indictment that was preferred againſt my client, was for the meridian of Yarmouth—when it came into this court, it is remembered what a pretty figure theſe gentlemen then cut—My friend and I were both brought down upon this occaſion—My client was put to very great expenſe; as you are well aware, Gentlemen, we do not attend here for nothing.—The caſe was opened by Mr. Partridge, with great clearneſs and decency—with great force and propriety—I know, and reſpect his character—I know his mind—I have not a doubt, but that if the cauſe had gone on then, ſo as to have given Mr. Partridge an opportunity of knowing its real features, he would not have urged the conviction of Mr. Hurry. I have been recently engaged myſelf, in a ſimilar ſituation, againſt the Honourable Henry Hobart, the Foreman of the Grand Jury now ſitting in this place. —He has done me the honour, ſince I have been here, though I never had the pleaſure of knowing him before, to thank me for my conduct upon that occaſion.—I opened the caſe which I was called upon to ſupport, with firmneſs, as Mr. Partridge did his—I opened it, with ſetting forth all thoſe circumſtances, in a pointed light, that ſeemed calculated to bring conviction home to the defendant—ſo far my duty, as an Advocate, extended.—But when I diſcovered the nature of the evidence which was adduced—in the face of my clients, who are now, perhaps, curſing me for my conduct, for ought I know—inſtead of endeavouring to urge the Jury to

convict the defendant—I ſhut up my brief, with—God forbid that they ſhould think of convicting him upon any ſuch teſtimony as they had heard—I hope, never in the Advocate to forget the duty of a Gentleman, or the characteror feelings of a Chriſtian.—I would rather loſe all my ſubſiſtence, all thoſe means by which alone I am enabled to maintai na wife, whom I love, and a numerous family, whom it is my duty to provide for, than give up that benevolence of character (which, I truſt, I have hitherto, and which, I hope, it will ever be my pride to maintain) by holding out to ſhame any man, whom, in my conſcience, I know, or believe to be innocent.—But, Gentlemen, then I aſk, What muſt that man be, who, in his own genuine character, does what I cannot do in the character of an Advocate? This may be ſetting forth a good opinion of myſelf; but whilſt my heart, my feelings, do not contradict me, but bear me out in this reſpect, I have a right to the boaſt. I do not think, though I thus lay claim to a large ſhare of good feelings, that I have more than are poſſeſſed by my learned friend, who is this day to defend Mr. Watſon, and who is, confeſſedly, not leſs diſtinguiſhed for all thoſe brilliant accompliſhments which have ſo deſervedly acquired him his high reputation as an Advocate, than for all thoſe dearer ſenſibilities which grace the Gentleman, and characterize the Chriſtian. I am ſure, whatever his duty to day, as an Advocate, may impoſe upon him, he will fully accord with me in every thing which, in this reſpect, I have been ſaying.—The principal witneſs called upon when this matter was before this court laſt year was Mr. Spurgeon.—He proved that Mr. Hurry ſwore that Watſon was indebted to him in eleven ſhillings.—I thought—I mean no imputation upon Mr. Spurgeon, I thought he was going to ſtop there.—I called out, let us know all that Mr. Hurry ſwore.—He then added—as agent for Mr. Shipley, and as appears upon the face of this bill.—I cannot help doing juſtice to the memory of that pious and good man *—who is now enjoying, I doubt not, the fruit of his labours—who, ſitting here as Judge, with a face clouded with the languor of a diſeaſe, which, a few weeks afterwards, brought him to an untimely end, inſtantly, upon hearing this part of Mr. Spurgeon's evidence, had his countenance covered with the bluſh of indignation; and, with a tone of voice, and manner of addreſs, highly expreſſive of his feelings, ſaid, turning to the Jury—Gentlemen, you muſt acquit the Defendant: He has been indicted upon half an oath.—And when I, with a zeal which I thought the honour of my client demanded, not with the borrowed tongue of an Advocate, but with a really excited ſen-

* Sir George Nares.

ſibility,

ſibility, entreated the learned Judge that he would permit the cauſe to go on, that my client's character might be more fully inveſtigated, and his honour more fully cleared; he, checking the impetuoſity of youth, replied to me—What greater honour can your client have than to be acquitted?—The Jury inſtantly returned their verdict, when plaudits, which were indeed more ſuitable to a theatre than a court of juſtice, enſued; but which, as characteriſtic of honeſt and good feelings, were, on ſuch an occaſion, not much deſerving of cenſure.

Now, Gentlemen, as ſoon as this event took place, one of theſe two things muſt at this moment have been the caſe—either that Mr. Watſon knew the whole of Mr. Hurry's oath when he preferred the indictment, or that he knew it now when he was acquitted.—Attend particularly to this.—Both Mr. Watſon and his partner Reynolds were in court at this time.—Let us take the firſt—that he knew it before.—If he did; what defence can be made for him?—He gravely and deliberately garbles and mutilates an oath to make it ſpeak a lie.—There is no ſpeech that can go beyond the bare ſtatement of the caſe.—There is ſo much fraud, meanneſs, and cruelty in this man's conduct, thus viewed, that the Engliſh language has not words ſtrong enough to convey my ideas of the abhorrence in which it ought to be held.—But, perhaps, it will be ſaid, Mr. Watſon was not in the Court of Requeſts when Mr. Hurry took the oath—that Mr. Reynolds, his partner, had not communicated the whole of it to him—that he did not know but that he had ſtated the whole when he preferred his bill.—Be it ſo.—He was certainly in this court when his own witneſs, Mr. Spurgeon, gave a full detail of Mr. Hurry's oath.—Had he not then had malice in his heart—had he been actuated only by what he pretended to be actuated by, a regard to juſtice alone, what would he have done?—What would he have done?—Why he would have come forwards in the face of the court, and ſaid, let me make ſome atonement to Mr. Hurry.—If I had known that theſe words were in the oath, I would never have taken the ſtep I did.—Do let me embrace this injured man.—Let me fall at his feet—let me implore his forgiveneſs.—Had he done this, I would myſelf have been the firſt to have ſaid—Mr. Hurry, take this man to your arms—he has injured you—but, as a chriſtian, it becomes you to pardon him.—Remember, Sir, that in the courſe of juſtice none of us ſhall ſee ſalvation.——But Mr. Watſon did not do this.—No; he, and his partner Mr. Reynolds, left this court with revenge and malice ſtill rankling in their hearts—they went out, like the father of all wickedneſs into paradiſe, meditating miſchief againſt the happy and the innocent. Gentlemen, I

ſhould

ſhould be aſhamed of myſelf, unleſs I had the moſt clear, ſatisfactory and unequivocal proof of what I am here alleging, to urge a thing ſo groſsly flagrant upon your obſervation, as that which I am now under the neceſſity of doing:—Is it credible—Is it to be believed, that Mr. Watſon, notwithſtanding his being preſent in court—notwithſtanding Mr. Hurry was acquitted upon the oath of the proſecutor's own witneſs—upon a total variance between the oath proved, and the oath on which the indictment was preferred—that this man ſhould, notwithſtanding all theſe circumſtances, inſtantly upon his leaving the court, cauſe to be inſerted in the public papers that Mr. Hurry was acquitted upon a flaw in the indictment; and that a freſh indictment would be preferred againſt him?—I need not aſſert that Mr. Hurry was not acquitted upon a flaw in the indictment.—If this were the caſe; I have nothing to do but to get my worſt enemy accuſed of the worſt crime, and then, when not a ſhadow of evidence is brought in proof of my allegation, and of courſe he is decreed innocent, I have only to give it out that he got off by a flaw in the indictment, and that I ſhould commence a freſh proſecution, and thus my end is effectually anſwered. But, Gentlemen, this was an Attorney who did all this—one who could not be ignorant that, had the caſe been true reſpecting the cauſe of Mr. Hurry's acquittal, he could not be tried again for the ſame offence. But he was galled at his not ſucceeding—and he was determined to do ſomething to check the happineſs of my client, going home to his houſe with the honeſt triumph of integrity.—It is really, Gentlemen, ſhocking to my feelings to ſtate theſe matters to you.—I know all the happineſs of domeſtic life—I know all the dear ſympathies of the tendereſt and deareſt of connections—I am alive, therefore, to the joy with which this worthy man haſtened to his anxious, diſconſolate family.—I can conceive his emotions when he firſt ſaw them, trembling between hope and fear, crying out to them—It is over—It is over—oppreſſion is paſt—and I am reſtored to my character again. I ſay, Gentlemen, I can conceive, I can ſympathize with him in this moment of returning happineſs. Nor am I leſs ſenſible to the reverſe that was ſo ſoon to follow.—Good God! what muſt have been the feelings of this man, what of his wife, what of his relatives and friends, thus congratulating each other with the happy termination of their anxiety, when he found in an advertiſement in the common newspapers—that he eſcaped diſgrace but by a flaw in his indictment, and that he was ſtill threatened with a freſh proſecution?—that his diſcredit was chronicled with rewards offered for the recovery of loſt pointers, and with notices concerning footmen that were in want of places—nay, that his diſ-

grace

grace might have the greateſt poſſible notoriety, the PERJURY CAUSE is placed next to the advertiſement of the mail coaches, ſo that no one, who wanted information reſpecting the beſt mode of conveyance to London, could look into the paper without this firſt catching his eye. Nor was the paper, in which this advertiſement was firſt inſerted, one of thoſe general papers, ſuch as the Public Advertiſer, in which, from the multiplicity of articles, this might chance to have been overlooked; but it was in a paper of the county in which Mr. Hurry reſided, in the Norwich Mercury, which, in a ſingle day, perhaps, was read by thouſands, all of whom were well acquainted with the character and ſituation of him, and of all his family.—Give me leave, and I will read you the paragraph—"The Perjury cauſe which came on to be tried at Thetford, which was ſuppoſed to have taken up a long time, took up but a ſhort one, it going off on a defect in the indictment, notwithſtanding which, a freſh indictment will be preferred by the proſecutor."—Going off upon a defect in the indictment—which cleared the Defendant only in ſuch a manner that his guilt was ſtill notorious,—and notwithſtanding which, a freſh indictment will be preferred by the proſecutor.—I will venture to ſay, that had this been the caſe, my client was in a worſe ſituation, than if the charge had been actually brought home to him.—A man, found guilty of a crime, and condemned to the puniſhment thereto annexed, becomes an object of pity; but when a knave gets off by a trick, by a flaw, by a defect in the indictment, he is more an object of deteſtation than ever. What a ſituation then was my unhappy client again thrown into! This paragraph, when printed, had an extenſive circulation. News-papers go all over the world.—What was ſaid by the reverend Judge goes but a little way—is by folly miſunderſtood, or by prejudice miſrepreſented.—This circumſtance, then, Gentlemen, muſt have its weight in impreſſing you with the conviction of the malicious diſpoſition of the defendant Watſon. My Lord will tell you that it is evidence in this cauſe. It goes to the giſt of the action, and whatever tends to the proof of that, is evidence.——How differently conſtructed muſt this Mr. Watſon be, from any thing that I can conceive of myſelf! If I thought that a man had robbed my houſe, and, though I could not ſwear to him myſelf, that ſome of my ſervants could—and therefore had him apprehended—if, upon his being put upon his trial, it plainly appeared that he was innocent; and that I had injured him in his trade, and had put him to much expenſe and trouble,—with what pleaſure, with what eagerneſs, would I have put a paragraph into the papers to declare, to publiſh, his innocence, and to make him all the reparation in my

power.

power. But what was the conduct of Mr. Watſon? What?—why the man whom he could not convict, he ſtrives to debaſe—againſt the authority of the learned Judge—againſt the deciſion of a Jury—againſt the concurrent teſtimony of a crouded court,—Mr. Hurry ſhall be a perjured man. I have failed to puniſh him by wiles, I will puniſh him by ſlander—I will blaſt him with calumny—the ſlow-moving hand of ſcorn ſhall point at him. Thank God, my own heart gives me no image of a man capable of thus acting. I need not tell you, Gentlemen, who have all the relations of life belonging to you—that hence are derived the greateſt happineſſes that this life knows. I need not tell you, that there are anxieties which abſence produces, and that there are heart-affecting welcomes, which earneſtly-wiſhed-for returns occaſion. Since I have been in this place, the family of my learned friend here * has exhibited to me a ſcene of this nature, which filled me with delight.—The joy, the affection, the cheerfulneſs, which the viſit of a brother called up, deeply affected my ſenſibility; but while thus arreſted by the pleaſing ſcene, I confeſs to you, Gentlemen, I could not help ſaying to myſelf—Suppoſe this happy family, thus cheerful, thus bleſt, ſhould, in the midſt of all their comfort, be, on a ſudden, informed by an advertiſement in the papers, that this brother, over whom they were ſo much rejoicing, would be indicted for a horrid crime, from which, indeed, he had already eſcaped but by a flaw. I can feel—I felt—this imaginary tranſition. I could not bear the image which my own fancy had wrought up—I was obliged to divert my ideas, that I might be enabled to check my emotions.——Mr. Watſon, however, was formed after quite a different faſhion. He could bear to conjure up, in his own imagination, a ſimilar picture of diſtreſsful change; and, what is more, he could coolly endeavour, and take ſteps, to have it realized. My client had eſcaped the ſnare that had been laid for him; but Mr. Watſon reſolved he ſhould not triumph—he was determined he ſhould not preſent himſelf with joy to his wife, whom he had not married many months—to his friends and his relations, who were waiting his return with awful ſolicitude. He fabricated the libel—that Mr. Hurry was acquitted by a defect in the indictment, and that a freſh bill would be preferred by the proſecutor—and he had it inſerted, by means of a Mr. Lock, in four different papers. Upon the appearance of this in the Norwich Mercury, Mr. Bell, Mr. Hurry's attorney, with all that good ſenſe and temper, for which, I am told, he is, at all times, conſpicuous, wrote a private letter to Mr. Lock, of which the following is a copy:—

* Mr. Mingay.

SIR,

"SIR, "Yarmouth, March 30, 1786.

"ON inquiry of the printer of the Norwich paper, I find that you are the author of the advertiſement in laſt Saturday's paper, purporting that the Perjury cauſe, tried at Thetford aſſizes the Saturday preceding, went off upon a defect in the indictment; and that a freſh bill will be preferred. Mr. William Hurry, the defendant in that cauſe, conceiving that this advertiſement is publiſhed with a view to injure his character, complains againſt you for your conduct. It is ſurely very ſtrange that one, who calls himſelf a merchant, and muſt, if he has any feeling, be ſenſible of the value of a good name, ſhould thus ſport with the reputation of another. Mr. Hurry knows not that he ever injured you, and can therefore find no cauſe for this your attack upon him. At preſent, he talks to me of calling you before a court to anſwer for this conduct; and he doubts not but a Jury of Norwich Merchants will think him entitled to ſome recompenſe for the injury done him by you. However, Mr. Hurry never acts from ſudden impulſe, and therefore he will wait for your anſwer, which I ſhall expect to receive to-morrow. "I am, Sir, your humble ſervant,

JOHN BELL."

Now this was the moſt honourable and proper conduct, that could have been purſued by Mr. Bell, who, at this time, did not know that Mr. Watſon had any hand in the manufacturing of this advertiſement. But what does Mr. Lock do?—He publiſhes this letter in the paper, and, to envenom the ſting, that had been faſtened in Mr. Hurry's boſom.—He prefaces it with theſe ſtrictures—"Advertiſement to the printer. Sir, that the impartial public may judge of the *malevolence* and perſecuting diſpoſition of Mr. Hurry, the following letter is inſerted."—May I aſk you, Gentlemen, if there be any evidence of a perſecuting diſpoſition in Mr. Bell's letter? On the contrary, are there not ſtrong marks of a temper juſt the reverſe?—Mr. Lock, feeling that he would be juſtly dishonoured, and would ſubject himſelf to ſome degree of danger, if he did not give ſome account of this buſineſs, added to Mr. Bell's letter, which he publiſhed, the following:

"The paragraph, which, under the name of an advertiſement, is alluded to in the above letter, was received by me from the hands of Mr. Watſon, and conveyed to the printer by my clerk; and, after the threats, which, ſince the trial, have been publicly given out by Mr. Hurry and his friends, of bringing his action of damages againſt Mr. Watſon, he has ſurely little reaſon to be ſurpriſed at the publication of ſuch an advertiſement.

Norwich, April 3, 1786."

Now

Now where are thoſe threats of which Mr. Lock complains? Is it a threat, for a man to take ſteps to get his wrongs redreſſed? At this time we had been conſulted upon this buſineſs—the writ was actually ſued out, and ſome advances were made in that action, which, I truſt, will have a triumphant effect before this ſun is far declined.

Here, then, I fix malice upon the Defendant in this cauſe. If the fact itſelf did not do it ſufficiently, unconnected with this—this—this does. Whenever a man proſecutes another for a crime, ſuch as that with which my client was charged, from ſiniſter motives, and not from motives of public juſtice, and this is, by any means, to be made plainly to appear, that man is certainly actuated by malice. If, therefore, I indict a man for what he could not be guilty of, and which I knew was not a ſubject of perjury —and when he comes down from the bar fairly acquitted, I diſappoint his triumph, and turn his libeller;—my motives of conduct in the whole of this buſineſs cannot be equivocal. If this be not malice—human nature is ſubject to worſe paſſions, is infinitely more impure, than I have at preſent any conception of. Of this malice then, Mr. Watſon ſtands fairly convicted. For this malice, Mr. Hurry took the neceſſary ſteps to bring him to a ſenſe of his miſconduct, and to clear his own reputation, which, by this man's means was ſtill ſubject to imputation.

Gentlemen, the action being brought, it was ſent down to be tried at Norwich. Mr. Mingay and myſelf were engaged conditionally to have been there. Circumſtances occurred that unavoidably prevented us. The cauſe was opened by my learned friend, acroſs the table, Mr. Murphy, with all that ſtrength of language for which his various writings are ſo conſpicuous; and he made, as I am told, a very great impreſſion upon the Jury. Mr. Hardinge was brought down to defend his client—and in this, Mr. Watſon ſhew no ſmall diſcretion and judgement; for an abler advocate, one, who can make uſe of more powers of eloquence in ſupport of any cauſe that he is called upon to maintain, wears not the habit, or the dreſs of law. But did Mr. Hardinge come out with his defence of this man? No.—He knew, he felt, he had nothing upon which to defend him.—He perceived that his client ſtood naked and indefenſible. My learned friends, therefore, fixed upon a variance, a trifling, unimportant, variance (for ſo it was conſidered by the court of Common Pleas) between the record of acquittal and the declaration, pointed out to them by Mr. Berry, the clerk of the court. Theſe Gentlemen fixed upon a variance, for the defence of their client, who was proſecuted for endeavouring, by the variance of half an oath, inſtead of a whole one, to trample upon and beat down

down the character and happineſs of a fellow-creature. They turned round with this variance to my Lord. His Lordſhip thought the variance material. Says Mr. Murphy—I can reſiſt the Judge: I am convinced there is nothing in the objection. But being rather afraid that it might ſeem unbecoming him to oppoſe ſuch authority, he ſuffered the cauſe to be ſtopped; and Mr. Hardinge rode away on the back of an attorney. I would beg leave to obſerve to you, Gentlemen, that the iſſue of the buſineſs, at this time, reflected no diſcredit upon the learned Judge who was trying the cauſe. The hurry of a Niſi Prius is very often corrected by the cooler and more ſolemn determinations of the courts during term.

With this ſame record we are now come down again. We would have amended it; but the court would not even give us leave. Upon this ſame record we now ſtand here for judgement.—"The longeſt day will have an end;"—the race of injuſtice is almoſt run." You are now, Gentlemen, called upon—to protect worth—to uphold honour—to adminiſter comfort to the oppreſſed. Had an attempt been made to poiſon or to aſſaſſinate my client, and it had been ſucceſsful, in my opinion, there would have been no compariſon between this and the proſecution which the defendant brought againſt him. He would, in the former caſe, have been happy—he would have been where the wicked would have ceaſed from troubling him—he would have ſlept in quiet; and his friends, however poignant their anguiſh for his fatal exit might have been, would have comforted themſelves with the chriſtian hope of ſeeing him again in a better world. But if this cruel proſecution had ſucceeded—the miſery would have been, not that he would have died, but that he would have lived—an outcaſt of ſociety—a wretch diſgraced and abhorred by even the loweſt of his fellows—bereaved of every privilege of a ſocial being—and what, perhaps, would more than any thing elſe have pleaſed the authors of his proſecution—deprived of his franchiſe to give his vote at the next general election. And if he eſcaped this cruel proſecution, think, I pray you, of that peace of mind of which he was deſpoiled—think of all thoſe horrid feelings with which he muſt have been harraſſed, whilſt his character was uncleared, and his ſecurity uneſtabliſhed.—There is in every man a high ſenſibility to the opinion which his fellow-creatures may form of him. When he obſerves the ſmile of approbation from every quarter, his heart beats with delight; he enjoys a happineſs ſhort only of that of heaven itſelf: Adverſity loſes all its power to wound him; proſperity ſtill wears a gayer aſpect. But take the ſame man—expoſe him to the blaſts of unmerited detraction—the ſunſhine of virtue is gone—"this canopy of heaven, fretted with luſ-

tres, is but a peſtilential congregation of vapours."—He thinks he hears the voice of obloquy in every ſound; he imagines himſelf the ſport of the tongue of every one whom he paſſes; his food digeſts not in his ſtomach; and his bed is wetted with his tears. In ſhort, if there be any thing that brings a man down to his grave ſooner than another, it is the cruel conſequence of ſlander. But it may be ſaid, that when a man is acquitted, his character is not hurt; he is the ſame man he was before. I deny this to be fact. Many read the paragraphs which detraction fabricates, that do not hear them contradicted: many have given them a circulation that do not wiſh to have them contradicted. We have, in this neighbourhood, a moſt ſolemn inſtance to this purpoſe. The deareſt friend I ever had in the world, whoſe houſe* I yeſterday paſſed with an aching heart, ſplendid as his character was, was, nevertheleſs, expoſed to a public trial. I had the honour to attend him during the whole of the painful ordeal to which he was forced to ſubmit. And though he was acquitted, after the moſt minute and ſevere inveſtigation, by a court martial of as gallant officers as ever were clothed in a naval ſuit, in the manner the moſt honourable that could poſſibly be imagined; yet has he not ever ſince been the ſubject of political ſquibs? Has he not been cenſured in magazines, news-papers and pamphlets? Nay, are there not ſtill even many good men, who, looking through the medium of ignorance or of prejudice, yet think that this man, thus acquitted, did tarniſh the honour of the Britiſh flag? And what is to be done in ſuch a caſe as this? Who can follow Admiral Keppel in all the manœuvres of his fleet? Who can point out, whenever they hear the vulgar blaſphemy to which his conduct is every day expoſed, the various particulars of the complicated tranſactions of that buſy day, which gave riſe to his arraignment? Who knows not that there are numbers in the world too lazy to vindicate, where a long detail of circumſtances is requiſite? Who knows not that there are numbers who are but too fond at leaſt of letting malignity work its own will? I am bold to ſay, that my friend, great as he was, innocent as he was, never got over the effects of that court-martial—it preyed upon his ſpirits—and, at laſt, he died a martyr to its influence. And what is the caſe of my client? What has he been accuſed of? He has been accuſed of one of the worſt crimes of ſociety. It is true he has been acquitted; but how is he characterized?—"Is that the Mr. Hurry who was tried for Perjury?" Good God! it is enough to make a man ſhrink from the light of day. Who will tell the long tale that will wipe off the effect of this trait in his deſcription?

Gentlemen,

* Elden-Hall.

Gentlemen, the taſk is your's, and a ſolemn taſk it is. Should you find ſmall damages; is not the queſtion obvious?—What has all this ſuſs been about?—Why all this expence of counſel?—There muſt certainly be ſomething about this man of, at leaſt, an equivocal nature, if you, a Norfolk Jury, think him entitled only to a trivial compenſation. The malice was clear; the want of probable cauſe is incontrovertible; the ſubſequent inſertion of the libel is an aggravation. If then, notwithſtanding theſe things, your verdict ſhall be in his favour but a trifling ſum, you again blaſt his credit—you do not do what ought to be done for him—you do not ſend him forth into the world perfectly cleared of the groſs imputation under which he has ſo long laboured.

It is your duty, Gentlemen, to give Mr. Hurry ſuch damages as you would wiſh ſhould be given to yourſelves, were you in his ſituation. And believe me—be the compenſation you may aſſign him what it may—he muſt ever wiſh that the event, to which that aſſignment has a reference, had never happened. It muſt ever recur to him—he will always think it one of the greateſt and moſt ſerious misfortunes of his life:—For, to adopt the words of a favourite author of my learned friend's—"Ye cannot miniſter to a mind diſeaſed—pluck from the memory a rooted ſorrow—raze out the written troubles of the brain—andwith ſomeſweet oblivious antidote, cleanſe the ſtuffed boſom of the perilous ſtuff, which weighs upon the heart."

Gentlemen, you may yourſelves be the ſubject of the ſame wicked attempt: you muſt offend ſomebody when you are aſſerting your own rights, or what you eſteem the general rights of mankind. And be the man whom you offend like the proſecutor of my client—he can mark you down for deſtruction—he can cut you to the earth—and, if you get off, he can ſay, it was but by a flaw in the indictment. You apply for redreſs—you complain of the compenſation as trivial that is made you. It may then be ſaid to you—why you have ſet the precedent yourſelves—what can you expect?—the meaſure you meted has been meted to you again.

But, in this caſe, putting all compenſatory damages out of the queſtion, no man will ſay, the moſt romantic defender will not pretend, that my client ought not to be reimburſed. Mr. Bell, whom I ſhall call, will tell you—what are the expenſes to which Mr. Hurry has been forced—that, independent of all the anxiety, all the oppreſſion, and all the concomitant evils of this proſecution, he has, merely in his defence of that proſecution, laid out between ſix and 700l. But why all this profuſion, it may be ſaid? why were my learned friend and I employed upon this occaſion? It is difficult for me to ſpeak on this point, without ſubjecting myſelf to the

imputation

imputation of vanity. But it is well known, that there are ſome men whom times and chances puſh more forward into the world than others. My learned friends (I mean no diſparagement to theſe Gentlemen on my left hand) who are of the firſt ſtanding in this circuit, were retained on the part of the proſecution, and yet it ſhall be ſaid the proſecuted ſhall not go to any other perſons. This is juſt the ſame as if I ſhould knock a man down, and do him ſome eſſential injury, and then prevent him from going to the ſurgeon, in whoſe experience and ſkill he had the fulleſt confidence, by engaging him before hand, and then complain of the expenſe which, by my own ill temper at firſt, and my own perſevering malice afterwards, I had unavoidably obliged him to incur, by having recourſe to a ſurgeon at a diſtance. To the expenſes then, Gentlemen, which my client has been at in the progreſs of this buſineſs, he is entitled at your hands, of right. But this is not enough—you muſt do more for him—you muſt do that, by your verdict, which will give him the ſtamp of the opinion you, as his country, entertain of his integrity; of the total want of cauſe for the proſecution to which he has been ſubjected; and of the malicious diſpoſition of the defendant, who has ſo wickedly endeavoured to ruin his character and his happineſs. Had I that melody of voice, and that variety of tone, which my learned friend poſſeſſes in ſo eminent a degree, I would again recur to his favourite author, and quote from him thoſe emphatical ſentences, which mark a ſplendidly benevolent mind—" Who ſteals my purſe ſteals traſh, 'tis ſomething, nothing, 'twas mine, 'tis his, and has been ſlave to thouſands; but he that filches from me my good name, robs me of that which not enriches him, and makes me poor indeed."——Gentlemen of the Jury, I have now finiſhed. If my learned friend means to call no witneſſes, which I imagine is the caſe—if we are to be treated only with what he has to ſay upon the ſubject—why what is this but ſtill a freſh trick upon us? But I am under no apprehenſions. You, Gentlemen, will undoubtedly be amuſed with the opportunity that is afforded my learned friend, to diſplay all thoſe brilliant talents for which he is ſo much and ſo deſervedly renowned. But I beg leave to remind him, that eloquence, when proof is abſent, is but a beating of the air—the cauſe will remain the ſame. It will, even after the manner in which it will be attempted to be ſet off, be only like a painted ſepulchre, with its rottenneſs and putrefaction ſomewhat concealed. But ſhould any witneſſes be called, the rule of the profeſſion will then, Gentlemen, entitle me to addreſs you again; and ſhould Mr. Watſon put me into that ſituation—although I have thus long detained the court—and although he may think I can have nothing more to add—he ſhall find that no diſcourſe can be exhauſted, which has his malignity for its ſubject.

Mr.

Mr. BRADLEY.

Mr. Mingay—You are agent for Mr. Hurry's attorney?——Yes, Sir.

What is that you have in your hand?——The office-copy of the record.

It is a true copy?——Yes.

What is that, Sir?——The examined copy of the indictment.

Is it a true copy?——Yes.

Is Mr. Watſon's name on the back?—Yes.

Mr. BELL.

Mr. Mingay—You are attorney for Mr. Hurry?—I am.

Were you preſent at the time he was tried in the other court?—I was.

Did you take an account at the time?—I did not; but as ſoon as the trial was over, I went to Mr. Murphy's lodgings where I read what he had taken on his Brief, and have read it over many times ſince.

Will you endeavour to give an account of what paſſed at the trial?—Mr. Partridge opened the caſe—(Here the witneſs was interrupted by Mr. Partridge, who ſaid there was no occaſion for the witneſs to ſtate his ſpeech.)

Give us an account, Mr. Bell, of what evidence, &c.—Mr. Spurgeon was called; he is Clerk of the Court of Requeſts; he ſaid that Mr. Hurry ſwore, that Mr. Watſon owed him eleven ſhillings: upon being aſked if he ſaid any thing more, Mr. Spurgeon ſaid, yes, Mr. Hurry added, as agent for Mr. Shipley, for an overcharge of cartage. The Judge then took up the record, and, after peruſing it, ſaid, They have taken part of his words, can this be an abſolute ſwearing to a falſehoood? He then turned to the Jury, and ſaid, Gentlemen, you ſee the nature of this charge, that the defendant ſwore that the money was due to him in his own perſon, whereas he ſwore it was due to him as agent for another: Will you take a man's words, and not his explanation! Gentlemen, you muſt acquit the defendant.

Mr. Bell, you can tell us what expenſes Mr. Hurry was at, at the laſt trial?——I cannot tell all: My own bill was upwards of 562l.

That included the Counſels fees?——It did: There was 44l. more for the expenſes of the witneſſes at Thetford; and ſome of the witneſſes were not paid by me.

So that the whole, within your knowledge, was upwards of 600l.?——Yes.

Do you know the hand-writing of Mr. Watſon? Look at that bill (this was the ſalvage bill).—This is Mr. Watſon's hand-writing.

ALEXANDER BARTLEMAN.

Mr. Murphy—You are owner of a ſhip called the Alexander and Margaret?—I am.

Did ſhe lie at any time in Yarmouth Roads?—Yes, in July, 1785.

Where do you live?—At North Shields.

Did you hear of any accident which your ſhip met with?—Yes; ſhe loſt two anchors and two cables.

Do you know it of your own knowledge?—Yes.

Did you write to any body about the matter?—Yes, to Mr. Sam. and Wm. Hurry.

What directions did you give?—I wrote to them to procure the anchors and cables, learning from the captain where they lay.

Were you, at any time, at Yarmouth after that?—No.

Did you interfere, and make any explanation to Mr. Watſon?—Mr. Hurry claimed the anchors and cables: I know nothing but that he got them.

Can you tell us the weight?—One anchor was 10 cwt. and two quarters; the other 9 cwt. three quarters.

What was the weight of the cables?—I can tell you the length of them; one was between 15 and 16 fathom, the thickneſs 12 inches; the other between 45 and 50 fathom, the thickneſs the ſame.

Being converſant with ſhip matters, can you form a judgement what was the weight?—Near a ton.

How much is a ton?—Twenty hundred weight,

Croſs-Examination.

Mr. Le Blanc—Was your letter directed to Samuel and William Hurry?——Yes, it was.

Are thoſe two Gentlemen connected in trade?—I believe ſo.

SAMUEL HURRY, jun.

Mr. Adair—Did you go to Mr. Watſon, to pay the ſalvage to him for the Alexander & Margaret's anchors and cables?—I went with the captain.

Did you aſk for a bill?—I did.

Look at that bill: was that the bill?—It was.

You paid the bill?—I did.

Whoſe money was it?—I had two ten pound notes from Mr. William Hurry, out of which Mr. Watſon gave me the change, which I returned to Mr. William Hurry.

When you returned the change, did Mr. William Hurry ſay any thing?—When I ſhew him the bill, he objected to the article of cartage, and deſired me to go back to Mr. Watſon, and tell him ſo.—I did go.

What paſt?—I only told Mr. Watſon that Mr. William Hurry objected to the article of cartage: Mr. Watſon ſaid it was the uſual charge.

He did not return any part of the money?—No.

Was there any thing afterwards that paſſed between you and Mr. Watſon?—I met Mr. Watſon upon the quay, and told him he would be ſummoned to the Court of Requeſts.

In what reſpect was the objection ſtated to Mr. Watſon?—In reſpect to the article of cartage.

What anſwer did Mr. Watſon make you?—Go, and conſult your great lawyer Bell.

Did you make any reply?—I ſaid he would certainly be ſummoned to the Court of Requeſts: To which he ſaid, I ſhall have no juſtice there, there are ſo many of your own family.

Where were the anchors and cables?—In the uſual place.

Croſs-Examination.

Mr. Hardinge—You were ſent, you ſay, by Mr. Hurry: in what character did you apply to Mr. Watſon?—As Clerk of the Regiſter Court of Admiralty.

Is it not the duty of this Court to deliver up ſuch things as they have in their cuſtody, upon the ſalvage being paid?—It is.

You claimed, then, thoſe anchors and cables?—Capt. Shipley ſwore to the anchors and cables, and I paid the money.

The cartage is included in the bill?—It is.

Do you know the meaning of the term cartage?—It is not a fee, you may make an agreement about it: It is a conſideration for labour in carrying, &c.

Are there not certain perſons appointed by this court to act as carters?——Mr. Watſon told me he uſually employed one Munfor.

You have lived as a merchant in Yarmouth?—Yes.

Do you not know that the corporation employ carters of their own?—I know nothing of the matter: I underſtood ſo from Mr. Watſon: I never did any buſineſs of this kind.

Did you not, in the year 1785, for a Mr. James Atty?—I cannot tell: If I did, it was as agent for Mr. Wm. Hurry.

The anchors were returned on the ſalvage being paid?—They were.

How long after this did you apply to Mr. Watſon?—I cannot tell.

Re-examination by the Plaintiff's Counſel.

You recollect that Munfor ſaid it was not uſual for him to receive the payment for the cartage at the time?—Yes: he ſaid he generally received it but once a year.

Were you in the Court of Requeſts?—I was.

How long was it after you had applied to Mr. Watſon, that Mr. Hurry made his demand upon Mr. Watſon, for the eleven ſhillings, in the Court of Requeſts?—It was in *July* that Munſor offered to return me 3s. 5d.

[Obſervation from the Plaintiff's Counſel—The indictment ſtates, that there was not that debt, nor any other ſum, due: We ſhall prove that they admitted 3s. 5d. overcharge, which was paid.]

Mr. SAYERS.

Mr. Mingay—Did you attend the Court at Yarmouth, when this buſineſs was brought on in the Court of Requeſts?—I did.

Who preſided at that Court?—Mr. Reynolds.

Who is he?—An attorney at Yarmouth.

What was he then?—Mayor.

Who was Mayor Elect?—Mr. Watſon.

State what paſſed—Mr. Hurry was ſworn by Mr. Spurgeon, the Clerk of the Court, in the uſual manner.

Did Mr. Reynolds aſk any thing?—Yes: He ſaid, Do you, Mr. Hurry, ſwear that John Watſon is indebted to you in eleven ſhillings? To which Mr. Hurry ſaid, Yes.

Did he aſk for what?—Mr. Spurgeon aſked the next queſtion; Do you ſay that John Watſon is indebted to you, William Hurry, in the ſum of eleven ſhillings? To which he anſwered, Yes.

In the courſe of this cauſe before the Commiſſioners, did Mr. Hurry ſay any thing by way of explanation?—He did, "as agent for Mr. Shipley, and as appears by this account," holding out a paper; adding, "I get nothing by it."

What followed upon this?—The Mayor pulled out of his pocket, and produced the Act of Parliament, and ſaid, the Court had no cognizance of the matter: the cauſe was at an end, and the complaint was diſmiſſed.

Was there not ſome money returned?—Yes: ſome explanation took place between themſelves about the overcharge, and 3s. 5d. was returned.

To whom was it returned?—They went up to pay it to Mr. Samuel Hurry; but I cannot tell who received it.

How long did the whole of this buſineſs take up?—A very few minutes.

Having told us what Mr. Watſon is, you can tell us what Mr. Hurry is?—He is a merchant.

A very

A very conſiderable one?—Yes, a very conſiderable one.

Are Mr. Watſon and his partner, Mr. Reynolds, ſmall Attorneys, or in extenſive practice? Are they not as eminent as any in your town?—They are.

Croſs-Examination.

Mr. Hardinge—You are an Attorney, practiſing in the Court of Requeſts?—Yes, I am.

Then you know the method of proceeding?—Yes.

Did you not iſſue out the ſummons?—Yes; it bears my ſignature.

Let me aſk you, when a debt is demanded by one perſon as agent for another, how is the claim made?—There is no uſage different in that Court from any other court.

Let me aſk you, was not the queſtion put to Mr. Hurry by Mr. Spurgeon, the uſual queſtion put to a witneſs when a debt is claimed?—Yes.

How ſoon after this proceeding was it that Mr. Watſon was Mayor?—This proceeding in the court of Requeſts was the 12th of September: he was ſworn in Mayor on the 29th.

Before this explanation was had, did Mr. Hurry claim as agent? Did he tell you ſo?—He told it to nobody that I know of.

Let me ask you, was it of his own head, or was it from the prompting of his brother?—It was at his brother's requeſt.

Was he one of the Commiſſioners?—Yes.

Do you happen to know who the Grand Jury were, or whether there were not ſome of the Grand Jury who were preſent in the Court of Requeſts? Was Richard Miller?——I did not ſee him in court.

Was Mr. Tolver?——He was.

Re-examination.

Mr. Mingay—When Mr. Hurry came into court, did he bring his books with him?——He had his pocket-book in his hand.

Do you recollect who were upon the Grand Jury?——I do not recollect them all.

Then we will endeavour to aſſiſt your memory. Do you know John Fiſher, was he one?——Yes.

What relation is he to Mr. Watſon?—He is couſin to Watſon's wife.

Do you know Mr. Cotton?——Yes.

What relation is he to Mr. Watſon?——He married Watſon's wife's ſiſter.

Do you know Mr. Coſterton? What relation is he to Mr. Watſon?—Mr. Coſterton's wife and Mrs. Watſon are couſins.

John Wright, do you know him? Is he any relation to Mr. Watſon? —No.

Is he any relation to Mr. Reynolds?——He married his wife's niece.

Mr. Seaman, do you know him? Is he any relation to Mr. Watſon? —No.

To Mr. Reynolds?—He married his wife's niece.

Stephen Godfrey, do you know him? Is he any relation to either of theſe Gentlemen?—No.

Is he not connected with Mr. Reynolds?—He has concerns with him in ſhipping.

[Here the Counſel finiſhed their inquiry reſpecting the Grand Jury with obſerving, that Mr. Watſon, by means of his relations, might have ſhipped off their client to Botany Bay.]

How long have you practiſed in the Court of Requeſts?—Five or ſix years.

Has it not been the cuſtom for the Common-Council-Men to be on the Grand Jury?—Yes.

Do you know Mr. Thomas Dade?—Yes.

Do you know whether or no he uſed to be on the Grand Jury?—He has been on the Grand Jury: I have ſeen him.

Your own brother, he was uſed to be on the Grand Jury?—Yes, generally.

Mr. Barker, he uſed likewiſe to be on the Grand Jury?—Yes.

They were not upon this Grand Jury?—No.

Does not the Mayor deliver out the liſt of the Grand Jury?—Yes, he does.

When a perſon has a charge againſt any one, and the party ſummoned does not appear, what is the practice in this court?—An order, *Niſi*, iſſues to pay the money in ten days, or ſhow cauſe; in the courſe of the ten days there is a court-day, on which he may ſhow cauſe.

Croſs-Examination.

Mr. Hardinge—In point of practice, after this order, the party making default is liable to an execution, is he not?—Yes.

Is this execution upon his body or goods?—Upon his body. [The witneſs ought to have ſaid on his body or his goods, that being the real fact.]

And what is the proceeding in this caſe?—He may be taken either to Bridewell, or the Gaol.

Mr. Erskine—There was no order *Niſi* made in this caſe?—No.

Mr. Erskine. My Lord, it being in evidence that Mr. Hurry was the Agent in this buſineſs; that an overcharge of three ſhillings and five pence

was admitted and actually returned; that the assignment of the Perjury was "that there was no sum of money whatever due"; that no cognizance was taken of the claim upon oath by the Commissioners, but that it was left by them quite undecided; your Lordship will see that it is quite unnecessary to enter into evidence respecting the actual Quantum of this debt, which, as it is a mere matter of opinion, can have no weight in the cause.

The Judge—it does not signify an iota one way or the other.

Mr. DADE.

Mr. Preston—How long have you been a Common-Council-Man of Yarmouth?—Twenty years.

Have you generally served on the Grand Jury?—I have very often.

Were you summoned upon this occasion?—No, not that I heard of.

Are you any relation of either Mr. Watson, or Mr. Reynolds?—I have not that honour.

You know Mr. Hurry?—Yes, I know him, and I know him to be a very respectable man.

Mr. LOCK.

What are you, Mr. Lock?—A merchant at Norwich.

You know Mr. Reynolds and Mr. Watson?—I do.

I have a paper here; look at that paragraph; was it put in by you?—No, it was not.

That was not put in by you: look at that; was that?—Yes. I sent it to the printer; I received it from Mr. Watson.

Where is the copy?—I have no copy of it whatever. Mr. Watson wrote it the day of the trial at Thetford, after the trial was over, with an intent to have it inserted in the Norwich papers, and he gave it to me in writing.

Where is that writing?—I gave it to one of the printers.

Mr. BACON.

You are the printer of the Norwich Mercury; that is your paper?—Yes.

Have you a copy of that paragraph or advertisement that is there?—I have; here it is.

Whose hand-writing is it?—I had it from Mr. Lock.

Mr. LOCK.

Is that your hand-writing?—Yes; I had orders to put the account into four papers: I copied this from the one I received from Mr. Watson.

Mr. Graham.—Can you undertake to swear that that was a literal copy?—No, I will not swear it: I often make mistakes in copying my own accounts.

Mr.

Mr. Graham.—My Lord, I object to evidence on this kind of looſe recollection. The witneſs will not undertake to ſwear that this was a literal copy. In this caſe we have a right to expect the beſt evidence that the nature of the caſe will admit of. Mr. Lock ſhould have been applied to; he would have told what he had done with Mr. Watſon's copy: the printer to whom he gave it might have been ſerved with a notice to produce it.

The Judge.—In common caſes you are certainly right; but in this, Mr. Watſon gave Mr. Lock one paper, which was meant to be multiplied. He employed Mr. Lock as his Agent: He entruſted him with Agency, and therefore becomes anſwerable for his acts.—The paragraph is admiſſible evidence.

The Clerk of the Court reads.—" The Perjury cauſe which was was tried at Thetford on Saturday laſt, and which was expected to have been a very long one, took up but a ſhort time, it going off on a defect in the indictment; notwithſtanding which, a freſh bill will be preferred by the proſecutor."

Mr. Erskine now propoſed to call evidence as to the property of Mr. Watſon, if his learned friend meant to urge *that* in mitigation of damages, but the Defendant's counſel ſcouting all ideas of this kind, the evidence was here cloſed on the part of the Plaintiff.

Mr. HARDINGE.

Gentlemen,

I have the honour to attend as counſel for Mr. Watſon, who dares, in this his own county of Norfolk, to affirm, that his character is known to be unimpeached. When I ſay he does this, I muſt remind you that Mr. Hurry, who is the Plaintiff, has not brought Mr. Watſon hither: Mr. Hurry, who is the Plaintiff, thought it would be wiſer policy for him to endeavour to wound the character of Mr. Watſon at London, than here where he is known.—From this county our enemy had fled: It was by compulſion that Mr. Hurry was obliged to appear in this court. With reſpect to the Norfolk character of Mr. Hurry, he has thought it wiſeſt to loſe and ſink it in the univerſal popularity of my learned friend, Mr. Erſkine, who, upon this occaſion, has rather addreſſed his indiſputed talents to popular favour, than to your diſpaſſionate judgements, and to thoſe grounds of proof and of argument which alone can give ſanction to your judgements: yet, in his partial zeal for me, he reminds me, that—" eloquence, when proof is abſent, is but a beating of the air". Gentlemen, I am really at a loſs in what light to conſider this cauſe—whether it is an action againſt Mr. Watſon ſingly; or an action of conſpiracy againſt Mr. Watſon, Mr. Reynolds, and the whole Grand Jury, who have all been indifferently repreſented as combining together in a cold blooded, malicious attack upon Mr. Hurry. Mr. Erſkine, as is uſual with him, has talked much

much of himſelf: he has a right to do ſo; but I muſt beg leave to correct him in one particular—I mean his benevolence—I give him ample credit for this, out of a cauſe; but in a cauſe, that paid, benevolence of his is a benevolence that is perfect ridicule. I flatter myſelf that as a man, I have ſome good nature—as a counſel I have none—it is my duty to preſs forward every topic that can make for my client. I cannot help ſmiling, when this Gentleman, who has been throwing about his firebrands, and dealing what I will call his envenomed ſlander, is Gentleman-Uſher to ſo many pathetic appeals to your humanity. Gentlemen, as men of taſte, you have heard my learned friend with great pleaſrue: As men, who feel for public honour, you have heard him ſafely. Paſſions you can have none; and if a ſpirit more implacable than ſpleen itſelf, can have kept this action alive till now; it is in your power, this day, perfectly to expel it.

I cannot help recollecting that my learned friend is very partial when he talks of ill blood, which, like a kind of Iriſh ill blood, he repreſents as being all on one ſide. A curious circumſtance has dropped from him—"I am afraid", ſays he, "you anticipate the whole of what I ſhall ſay reſpecting my client's character, and reſpecting the injury which he has ſuſtained"—notwithſtanding, however, this anticipation, he has made moſt wonderful exertions upon the occaſion. When the indictment firſt came into this court, his client, conſcious of his innocence—what follows—went to ſleep—No! ſent for Mr. Erſkine and Mr. Mingay. Now what is this, but as if I ſhould ſay—although I am in perfect good health, I'll have ſome advice; I'll not be content with ſuch as the country affords; but I'll ſend to London to Dr. Warren; and, what is more, I'll have John Hunter, the celebrated anatomiſt come down with him. Gentlemen, mine upon the preſent occaſion is a humble office: I am to connect, by cloſe principles, the law of the country. As Counſel for Mr. Watſon, it is matter of perfect indifference to me, whether the learned Judge ſhall tell you that it is your's to compare the rule expounded by the law, with the facts before you, or whether he ſhall explain the rule to you—I can ſafely entruſt it in your hands, or in the hands of his Lordſhip.

I will not meet my learned friend upon any one of the topics that are foreign to the cauſe. The whole matter lies in a nut. I will now, as a Lawyer, affirm to you that the law of England does not like this kind of action—It throws upon the plaintiff arduous proof; and, Gentlemen, Mr. Erſkine, with all his topics of a man's ſleeping the worſe, of his wetting his bed with his tears, and of the diſtreſsful ſituation of his wife and family, from his having been attempted to be robbed of his good name—by means of which, indeed, he has even, I believe, cauſed my learned friend here, Mr. Partridge to weep more than once—has done nothing for his client—has done, indeed, only what is as old as acting itſelf—what Mrs. Siddons is in the weekly habit of doing—touched the feelings of his audience with affecting repreſentations. Indeed, what is the rule upon the temper of the law in this caſe, but this? that for the ends of pub-

lic juſtice, and for the good of the ſtate at large, no proſecutor of ſo baneful an offen e as perjury ought to be proſecuted: we will guard thoſe againſt the effects of an error in their judgement, who are neceſſary inſtruments of public juſtice. In felonies, the plaintiff cannot ſtep one foot in the cauſe, unleſs he has a copy of the record of acquittal: the ſame thing cannot be done here. It is very remarkable, to ſhow the jealouſy of the law, that a negative proof is thrown upon him who brings an action like the preſent—he muſt ſhow that there was malice, and that there was no probable cauſe. Now, Gentlemen, I take the liberty to aſſert to you, that this plaintiff has proved neither of theſe propoſitions—but if I could admit that he had proved either of the two, and not the other, the action would not lie.

I will begin with the conſtituent part of this action—malice. I have looked at the various definitions of malice. It is plain it muſt be ſomewhat more than mere ſpleen. I will ſuggeſt one definition from an old writer—*Si quis, datâ operâ, malè agat*, that is malice. If any man, in a given action, acts wickedly, he is guilty of malice. Implied malice, then, as applicable to this cauſe, is new; and, in my opinion, extremely inaccurate; for if it be law that both of theſe propoſitions muſt be proved, how can either of them be implied? I underſtood my learned friend to ſay, that the want of probable cauſe does not prove malice, unleſs the proſecutor knew this: and how is this to be proved? how, if the fact were proved, could it be ſhewn that the proſecutor was aware of the law upon it? Give me leave to remind you of a very celebrated caſe—I mean the caſe of Sir Thomas Davenport—It is ſo recent, and ſo well known, that I need but mention it. His was a direct poſitive oath that a particular man had robbed him; whereas, by the confeſſion of the perſon who had actually been guilty of the crime, it was plain that he had been miſtaken. Gentlemen, it has been ſaid, by a very learned Judge, that the very wildeſt error, that ever originated, may be conſiſtent with a motive as pure as can be imagined.—But then this is generally very eaſy of proof.—For malice is not always a thing that ſkulks—It will betray itſelf by overt acts.—Hence then it is, that the Judges, Holt and Lee, have ſaid expreſsly—that expreſs malice muſt be proved in all actions like the preſent.—And is there any ſuch malice as this to be proved in the conduct of Mr. Watſon? I allow that he had reſentment in his mind; and then I aſk you, whether you would not have had the ſame: there is no proſecutor without it: take the caſe of a rape, where the father is the proſecutor—let me aſk, does he bring forward his proſecution from pure motives of regard to public juſtice, or does he not do it in a great degree from the reſentment he feels againſt the wretch who has injured his child? and yet he is not malicious becauſe he is thus actuated. Gentlemen, you muſt concede me, that Mr. Watſon had a right to reſent—he was Mayor Elect—within a month of being Mayor, when he was attempted to be diſgraced as a cheat. I remember Mr. Murphy, in his opening at Norwich, granted that it was ſomewhat of an indignity. The caſe was this—Mr. Watſon was ſummoned

ed by Mr. Hurry to a court for a ſum of money, where he wa obliged either to ſubmit to the demand, or to ſubject himſelf to be ſent to Bridewell. On this, then, their own ſtatement of the buſineſs, I would be content to reſt this part of the cauſe.—But it is a curious circumſtance that Mr. Spurgeon, though ſubpœna d by way of fineſſe, has not been called upon this occaſion. It is a ſingular circumſtance that, having produced what this gentleman ſaid upon a former trial, they have not thought proper to bring him forward now. But I have a right to ſtate to you what he would have ſaid. I hold it clear of all doubt that I am at liberty to ſtate, in theory, what Mr. Spurgeon would certainly have proved, had he been called. Let me then aſſume, for argument's ſake, that Mr. Watſon, willing to proceed with all due diſcretion, had recourſe to ſome learned friend, who is a ſenſible and prudent man, for direction how beſt to proceed in this buſineſs.—I muſt not preſume to hint that he had recourſe to Mr. Reynolds; for this gentleman, though of a perfectly unimpeached character, has been ſhown, by Mr. Erſkine, to be ten times more wicked than Mr. Watſon; and who, though not brought forward upon this occaſion, is to be wounded *per obliquum*—is to be groſsly calumnized *through* Mr. Watſon, and deſcribed as a partner in his malice—I muſt not, therefore, in this caſe, mention any names; but I muſt only ſuppoſe (what indeed I have much right to ſuppoſe) that Mr. Watſon, deſirous of conducting himſelf with perfect propriety, applied for advice to a perſon, who is not the leaſt attainted as to character, and that this perſon, after having duly conſidered the matter, gave it as his opinion that there was no occaſion to ſtate all the facts in the indictment—and then I beg leave to aſk, how can the omiſſion of theſe facts be any proof of malice in Mr. Watſon? And, Gentlemen, if Mr. Spurgeon had been called, need I to have had recourſe to aſſumption and ſuppoſition upon this matter? Would he not have given a full relation of all the ſeveral circumſtances relative to this buſineſs? It is obvious, therefore, for what reaſon this gentleman was not called upon for his evidence. I am not to be told that the cauſe was frivolous; for I anſwer, who hurried Mr. Watſon to that tribunal? Mr. Hurry did: and Mr. Watſon had a right to make uſe of every legal advantage. But we have the ſanction of the Grand Jury, that a bill was fit to be preferred againſt Mr. Hurry for the offence, *as ſtated to them:* and I now beg leave to aſſert it as a fact which has been proved, that every part of this caſe, *including the explanation*, was laid before the Grand Jury; for it has come out, in evidence, that *one* of the *Grand Jury*, at leaſt, was in the Court of Requeſts. Theſe Gentlemen, then, thus competent to decide upon the propriety of this buſineſs, made no heſitation in ſaying that ſuch an indictment as was preferred was juſtly preferred—and till this Grand Jury ſhall, all of them, be proved to be men totally void of all ſenſe and integrity, they are to be conſidered as having given a ſanction to this indictment.*

* The idea which the learned Counſel has here ſuggeſted, reſpecting the privilege of a Grand Juryman, that he has a right to form his judgement not only upon what appears actually in evidence,

Gentlemen,

Gentlemen, let me bring to your minds what this oath was—juſt exactly as falſe as any one ſhort propoſition can be—there was not one pa t of it true. Mr. Hurry charges Mr. Watſon, in a general way, in the Court of Requeſts, with a debt due to him in a ſum ſpecific: Mr. Watſon does not attend: the time arrives: he makes default: Mr. Spurgeon puts to Mr. Hurry, after he is ſworn,

from the teſtimony of others. but from what he knows of his own knowledge, touching the matter in queſtion, is undoubtedly perfectly juſt—It may not be unacceptable to the reader, if I give him here what the author of the book entitled Britiſh Liberties has ſaid upon this ſubject—" In all caſes, ſays he, wheu a jury is charged with a priſoner, and, after the i dictment is read, witneſſes fail to appear, the Court always ſpeaks thus to the Jury—*Gentlemen, here is* A. B. *ſtands indicted of ſuch a crime, but there are not any witneſſes appear againſt him, ſo that unleſs, on your own knowledge, you know him guilty, you muſt acquit him*—And, certainly, if the Jury's knowledge of a man's guilt is enough to condemn him, why ſhould not their perſonal knowledge of his innocence, or of the witneſſes ſwearing falſely, be ſufficient to acquit him? Let the witneſſes be as poſitive as they will, yet if the jurors have good and re-ſonable grounds not to believe them, they will, they muſt remain as ignorant to the party's crime as before. We find this expreſsly aſſerted for law in our books, as Style's Reports, lib. 2. 'Though there are witneſſes who prove the bill, yet the Grand Inqueſt is not bound to find it, if they ſee cauſe to the contrary;' ſo Coke, lib. 6. 'The 'Judges are uſed to determine who ſhall be ſworn, and what ſhall be produced as evidence to the Jury; but the Jury are to conſider what credit or authority the ſame is worthy of.'—If a Grand Jury are not judges of evidence, they ſignify nothing, if (as ſome allege) becauſe witneſſes ſwear deſperately, though the Jury do believe them, they ſhall be bound to find the bill. This is abſurd in the higheſt degree. Were this admitted, the Grand Jury ſignify nothing, and are no ſecurity to preſerve innocence.—We will give an anecdote nearly in Mr. Care's words—A lewd woman once reſolved to indict the then Archbiſhop of Canterbury for a rape: ſhe ſwore it, no doubt, very heartily According to *this new doctrine of going according to evidence*, the Jury muſt preſently have found the bill, the Archbiſhop muſt have been committed to priſon, ſuſpended from eccleſiaſtical juriſdiction, and his goods and chattels throughout England inventoried by the Sheriffs: would it, in that caſe, have been a good excuſe for the Grand Jury, to have ſaid, that though they believed in their conſciences the baggage ſwore falſely, yet ſwearing it poſitively, they, as ſo many pariſh clerks, were but to ſay Amen to her oath of the fact, and to find *Billa vera* againſt that eminent prelate? And if the Jury are judges of the credibility of evidence in this caſe, and may go contrary to it, why may they not have the ſame liberty where they find good cauſe in others? If an indictment is laid againſt a man for criminal words, ſaid to be uttered in a colloquium, or diſcourſe, though the witneſſes poſitively ſwear all the expreſs words in the indictment, yet, unleſs they will relate and fully ſet forth the ſubſtance of the whole converſation, it is impoſſible the jury ſhould judge of the matter, for expreſſions that are in themſelves, when coupled with other words, innocent and loyal, when taken in halves, and ſeparated from thoſe they were ſo coupled with, become very treaſonable; as if one ſhould ſay, *To affirm the King has no more right to the crown of England than I have (which is the opinion of the Jeſuits with reſpect to his Majeſty, if once excommunicated by the Pope) is deteſtable treaſon.*—And two men, at ſome diſtance, not well hearing or remembering, or maliciouſly deſigning againſt his life, ſhould ſwear, that he ſaid, *The King had no more right to the crown than he had.*—Now, that theſe very words, were uttered is true; but if the evidence are interrogat as to the reſt of the colloquium, they will perhaps ſay, there was much more diſcourſe, but they cannot remember it; what ſatisfaction is this to a Jury? Or would it not be hard for a man to be obliged to hold up his hand at the bar, under the horrid charge of treaſon in this caſe? The inquiry of a Grand Jury ſhould be ſuitable to their title, *a grand inquiry*; or elſe, inſtead of ſerving their country, and preſenting real crimes, they may oppreſs the innocent, as in the caſe of *Samuel Wright and John Good*, at a ſeſſions in the Old Bailey, about Dec. 1681.—*Good* indicts *Wright* for treaſonable words, and ſwore the words poſitively; but after a grand inquiry, the *Grand Jury* found that *Wright* only ſpoke the words as of others, thus, *they ſay ſo and ſo*, and concluded with this—*they are rogues for ſaying it*; and *Good* alſo at laſt confeſſed, that *Wright* was his maſter, and corrected him for miſdemeanors, and then, to be revenged, he comes and ſwears againſt him, and which he confeſſed he was inſtigated to by one *Powel*; ſo the Grand Jury, finding it to be but malice, returned the bill *Ignoramus*; whereas, if they had not examined him ſtrictly, they had never diſcovered the truth, and the maſter had, without cauſe, been brought to great charge, ignominy, and hazard." Britiſh Liberties, p. 379.

ſworn, this queſtion: what queſtion?—Why, the queſtion he puts to every man that ſues for a debt due to himſelf, *primâ facie*— "Do you ſay that John Watſon is indebted to you, William Hurry, in the ſum of eleven ſhillings? And what is the anſwer?—Yes. A prompter (not a uſual thing in a court of Juſtice) gives a hint—then an explanation follows—"as agent for another." But the explanation is as falſe as the original oath: In the firſt place, no ſuch ſum as that, which was ſtated, was due at all: ſecondly, it was not due to Mr. Hurry, perſonally: thirdly, it was not due from Mr. Watſon; he was the Regiſter; the money had been paid over by him to the carter. In juſtice to Mr. Watſon, I am bold to declare, that if I had been aſked my opinion, as counſel, reſpecting this oath, as it was preferred to the Grand Jury, though I do not ſay I would have ſaid it was adviſable to go upon it to the length of an indictment for perjury, I ſhould have had no doubt in ſaying that the indictment would lie—Nay, I go further—I have no heſitation in ſaying, that if the whole of the oath had been given, the perjury would ſtill have been of a more flagrant and malignant nature; for, in the firſt ſhort ſentence, he ſwears to a debt as due to himſelf; and as ſuch, undoubtedly, he is entitled to ſome degree of credit, as he muſt be ſuppoſed to be well acquainted with his own affairs: But in the two ſentences put together, he ſwears to a ſum ſpecific, as due to him for another, *from* a perſon, from whom it is impoſſible for him to ſay he ought to receive it, and who, in fact, was not the perſon: I do ſay then, and I will pledge, not only the little reputation I may have acquired, but that which I may at any time hereafter acquire, that, in point of law, this oath of Mr. Hurry's enabled Mr. Watſon to prefer a bill of indictment for perjury againſt him. And can it much be wondered at that he did? Let any man living ſay, whether there was not a deſign on the part of Mr. Hurry to injure Mr. Watſon. Let any man living ſay whether Mr. Watſon had not a right to ſay—I will bind him to his bond—He is the original Shylock.

Gentlemen, I have kept you too long on the article of malice. I will now advert to the want of probable cauſe. I will ſuppoſe, for argument's ſake, that there was, in fact and in reality, *no actual probable cauſe* for the preferring of the indictment in queſtion: but will you ſay that Mr. Watſon had no probable cauſe for *conſidering* this as a falſe oath, intended to prejudice him?—The record of Mr. Hurry's acquittal is produced: but what does this do, but remind me of a caſe in one of Foote's Farces?—A man ſwears falſely *now*, and is guilty of perjury: he ſwore *then*, and was not guilty of perjury: therefore a man that ſwears *now and then* is not guilty of perjury. Gentlemen, though I do not pretend to deſcribe Mr. Watſon as a man of brilliant parts, he is not an idiot; he cannot be imagined to have taken the ſteps he has, without any motives whatever; he cannot be conceived venturing upon a meaſure that would ſubject him to the forfeiture of credit, weakly and fooliſhly, without even any imaginary grounds whatever. The queſtion to be put in this caſe is this—Was there, or was there not, a probable cauſe to ſtrike the mind of

Mr. Watſon, that Mr. Hurry had, by a falſe oath, attempted to injure him? Let me put this caſe—the caſe, indeed, as it was exactly and preciſely put by my learned friend, Mr. Erſkine. Suppoſe it was urged againſt me, that I had ſworn to a debt as due to me in one character, whereas, in fact and in truth, it was due in another: would not the ſubſtance of this oath be falſe? Now then, if it was once underſtood that the ſubſtance of it was falſe, whatever the words are, it is not competent for him to tell me, that there is no probable cauſe for me to conceive him as perjured from his oath, framed as it was.

I am aſhamed, Gentlemen, to detain you ſo long, becauſe I appeal to the learned Judge for the ſupport of my opinion. The law itſelf has given Mr. Watſon a better counſel than either Mr. Erſkine or myſelf. Unleſs it was clear to a demonſtration, that there was, in this caſe, expreſs malice, and no probable cauſe whatever, you muſt acquit—(I uſe that term, becauſe my learned friend, in his ſpeech, let drop from him this expreſſion, "convict Mr. Watſon") I ſay, unleſs theſe things are proved, you muſt acquit Mr. Watſon. Mr. Erſkine has drawn a frightful picture of Mr. Hurry's ſuppoſed ſituation, ſhould this be the caſe, and has ſtrongly urged it upon you as a motive for exemplary damages. But Mr. Erſkine ſhould remember, that this argument may equally be preſſed on the ſide of Mr. Watſon. Is he on a bed of roſes, if you, by your verdict, ſhould determine him malicious—ſhould ſtigmatize him as the revengeful proſecutor of innocence?—*Nemo repente tu piſſimus fuit.* Supported then, Gentlemen, by the law, you have now an opportunity of cloſing for ever the differences that have hitherto ſubſiſted between theſe perſons, and of changing all their bad blood into the milk of human kindneſs. You muſt be influenced by no preconceptions: you have only to conſider whether you are not bound to ſay, that the man, who preferred the bill of indictment, whence has originated all this long contention, had not grounds for ſo doing—whether the act, that gave riſe to it, was not a caſe proper to be laid before the bar of the public. Partly in your opinion, and partly in the opinion of the Court, I ſit down with perfect confidence that your verdict will be in favour of my client.

No witneſſes being called on the part of the defendant, the Judge ſummed up the evidence on the part of the proſecution, and then addreſſed the Jury as follows:—

Gentlemen, This is all the evidence on the part of the plaintiff. There have been no witneſſes called on the part of the defendant. And as to the general poſitions, that have been laid down by his counſel, that, in an action of this kind, expreſs malice muſt be proved, and that any probable cauſe muſt be negatived, I admit and adopt them as true poſitions.—As to the expreſs malice, Gentlemen, that to be ſure is law; but it is a matter which muſt be dependant upon facts.—As far as the law is to be conſidered, the Judge muſt direct the Jury—As to the facts bearing upon that law, that muſt be left with you.

In

In the 1ſt place then—let us advert to the expreſs malice. As to this—this is a thing which is either to be inferred from the nature of the tranſaction, or from extrinſical evidence.

Now, Gentlemen, as to the intrinſic evidence, I muſt ſay, there does ariſe a very ſtrong ground whence to infer expreſs malice, from a bare view of this caſe: for it does appear, from the indictment itſelf, that Mr. Hurry ſwore only that Mr. Watſon was indebted to him eleven ſhillings; whereas it comes out in evidence, that he ſwore this not abſolutely, but with this qualification, "*as Agent to Mr. Shipley, and as appears by this account*", in which the matter in queſtion was ſtated. The varying of the oath thus, for the purpoſe of preferring the indictment, by a man who, from the nature of his profeſſion, could not be ignorant of the effect which ſuch a variance would make, does certainly argue, very ſtrongly, ſome degree of malice in the perſon, who thus acted.

But there is another circumſtance, which, undoubtedly, does tend to aggravate his offence. For ſuppoſe that the defendant did not know that he had not alleged the whole of the plantiff's oath when he preferred the bill of indictment againſt him, when, upon the trial, in which the plaintiff was acquitted, he could no longer be ignorant in this reſpect, then he ought certainly to have reſted content. But you find he did not.—But after the matter has been explained in court, and has had the deciſion of a Jury, he goes on ſtill, and cauſes to be publiſhed an advertiſement, ſaying that, "the perjury cauſe which came on at Thetford, and which was ſuppoſed would have taken up a long time, took but a ſhort one, it going off on a defect in the indictment, notwithſtanding which a freſh bill will be preferred by the proſecutor." This proves *perſevering* malice.

The next matter is whether, ſuppoſing there was malice, there was probable cauſe. Now, Gentlemen, it was ſaid, in the 1ſt place, that there was a probable cauſe, becauſe, even with the explanation, the oath was not true, the money not being due from Mr. Watſon, he having paid it over to the carter—ſuppoſing there to be any weight in this argument, it came out in evidence, that the money was claimed by the plaintiff in this action, before it was paid over.

The ſecond thing is—It is ſaid, that the defendant was not indebted to the plaintiff in the full ſum to which he ſwore in his affidavit. But this is not neceſſary—the aſſignment of the perjury is, that he was not indebted, either in the ſum of eleven ſhillings, or in any ſum whatever. An over-charge of ſix and tenpence has been admitted by the defendant. This then, Gentlemen, I do not think a ſufficient probable cauſe to have induced the defendant to have preferred his indictment. Perjury depends upon this—whether the thing was full within the mind of the man who makes the affidavit. Suppoſe it had been money lent—this would have been within his knowledge; and if his oath, and the fact had varied, there might have been ſome ground to imagine

him

him perjured But the plaintiff ſwore that the Defendant was indebted to him ſo much as he, the plantiff, had paid him, the defendant, more money than he ought to have done, according to the common uſage. It was a matter of opinion, and not of knowledge—It depended upon circumſtances, the price of labour, the diſtance, the quantity, &c.

From the [illegible] of the caſe, it does not appear that there was any probable cause to [illegible] the preferring of the indictment.

It being proved that the defendant, Watſon, had poſitive malice, my opinion with reſpect to which I have given you, the difference in the value, on a queſtion problematical, ought not to ſhelter him from this proſecution. I ſhall leave it to your conſideration— If you concur with me as to the facts the law is clear. As to damages, that is your province—And as I ſee ſo very reſpectable a Special Jury, I ſhall not even give a hint with reſpect to theſe.

The Jury retired, and the Court was adjourned. In leſs than an hour, a verdict was delivered to the Judge, at his Lodgings, for the Plaintiff—Damages 3000l.

FINIS.